Notice: In accordance with the memorandum of January 20, 2001, from the assistant to the President and Chief of Staff, entitled "Regulatory Review Plan" published in the Federal Register on January 24, 2001, 66 FR 7701, EPA has withdrawn this document from the Office of the Federal Register to give the Administrator an opportunity to review it.

Environmental Protection Agency

40 CFR Parts 122, 123, and 125

RIN-2040-AD60

Ocean Discharge Criteria: Revisions to Ocean Discharge Criteria Regulations

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency proposes to amend existing regulations implementing the ocean protection provisions of section 403 of the Clean Water Act. Today's proposed rule would further the protection of ocean waters, and provide a framework for enhancing that protection in the future.

A key element of the proposed rule would provide for establishment of baseline water quality standards for ocean waters beyond three miles offshore. These waters, designated

"Healthy Ocean Waters," would be protected by both a narrative statement of desired quality and pollutant-specific numeric criteria.

The proposed rule would strengthen the requirements for a permit to discharge to any ocean waters. For example, the proposed rule would require dischargers requesting permits to consider alternative disposal sites and would require that no discharge permit be issued unless there is sufficient information to evaluate the impacts of the proposed discharge.

The proposed rule would establish a number of Special Ocean Sites (SOSs). SOSs are areas within ocean waters that are of outstanding value. The proposed rule would also establish a process for identifying, establishing, and managing SOSs, including a process to petition for the establishment of an SOS. New discharges and significant expansions of existing discharges would generally be prohibited in SOSs. EPA is also proposing conforming and clarifying changes to the NPDES permit program regulations.

DATES: Submit comments on or before [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]

ADDRESSES: Public comments regarding this proposed rule should be mailed to: Ocean Discharges Proposed Rule Comment Clerk, W-00-18, Water Docket, Mail Code 4101, EPA, Ariel Rios Building, 1200 Pennsylvania Avenue, NW., Washington, DC 20460.

Hand-delivered comments delivered in person (including overnight mail) should be delivered to the Ocean Discharge Proposed Rule Comment Clerk, W-00-18, Water Docket, Room 57 East Basement, Waterside Mall, 401 M Street, SW., Washington, DC 20460.

You also may submit comments electronically to ow-docket@epa.gov. When submitting comments electronically, identify Ocean Discharge Proposed Rule (W-00-18) in the subject heading. For additional information on how to submit comments, see "SUPPLEMENTARY INFORMATION, Solicitation of Comments and Data." No faxes will be accepted.

FOR FURTHER INFORMATION CONTACT: David Redford, 202/260-1952.

SUPPLEMENTARY INFORMATION:

I. Potentially affected entities

A. Who Is Potentially Affected by This Action?

Entities potentially affected by this action would include those seeking National Pollutant Discharge Elimination System (NPDES) permits to discharge into ocean waters under the Federal Water Pollution Control Act (Clean Water Act), 33 U.S.C. 1351 *et seq.* The proposed regulation is relevant to ocean waters that are within the jurisdiction of the Clean Water Act. The following table lists the types of entities that EPA believes are potentially affected by this proposed rule.

Category	Examples of potentially affected entities/activities

Industry . . . . . industrial plants

. . . . . oil and gas facilities offshore

. . . . . shellfish dredging

. . . . . aquaculture

. . . . . seafood processors

. . . . . brine disposal

. . . . . lumber and wood products

. . . . . desalination plants

. . . . . sugarcane mills

. . . . . pulp and paper mills

. . . . . shipbuilding

. . . . . electrical utilities

States, Tribes, Territories, and Local Governments . . . . . publicly-owned treatment plants

. . . . . combined sewer overflows

. . . . . storm drain systems

Federal Government . . . . . sewage treatment

. . . . . storm drain systems

. . . . . other facility discharges

States, Tribes, Territories, Local Governments, and Persons . . . . . Petition for Establishment or Disestablishment of Special Ocean Sites

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. This table lists the types of entities that EPA is now aware could potentially be affected by this action. Other types of entities not listed in the table could also be affected. To determine whether your facility or activity is affected by this action, you should carefully examine the applicability criteria in § 122.1(b) of Title 40 of the Code of Federal Regulations and § 125.120 of the proposed regulation. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding "FOR FURTHER INFORMATION CONTACT" section.

II. Background Information

A. Why Is EPA Taking Today's Action?

Ocean and coastal waters include some of the most biologically diverse and productive habitats known. Roughly two-thirds of the fish and shellfish caught commercially in US waters depend on healthy ocean and coastal waters to support critical periods of their life cycles. Our oceans and coasts are also among the most economically productive areas as well. The coastal recreation and tourism industry is the largest employer in the Nation, and the second largest contributor to the U.S. Gross Domestic Product, serving 180 million Americans visiting the coasts every year. The commercial fish and shellfish industry contributes $45 billion to the economy every year, while recreational fishing contributes $30 billion to the U.S. economy annually. Healthy oceans are essential to the Nation's economy and natural heritage.

In recognition of the tremendous value of ocean waters and the threats that these waters

face, President Clinton issued Executive Order 13158, Marine Protected Areas in May of 2000, authorizing additional protections for beaches, coasts, and ocean resources. The Executive Order calls for various Federal agencies to undertake expanded efforts to protect ocean waters and to make special efforts to identify and protect the most valuable of these waters. EPA received the following direction under section 4(f) of the Executive Order:

> To better protect beaches, coasts, and the marine environment from pollution, the Environmental Protection Agency (EPA), relying upon existing Clean Water Act authorities, shall expeditiously propose new science-based regulations, as necessary, to ensure appropriate levels of protection for the marine environment. Such regulations may include the identification of areas that warrant additional pollution protections and the enhancement of marine water quality standards. The EPA shall consult with the Federal agencies identified in subsection 4(a) of this order, States, territories, tribes, and the public in the development of such new regulations.

Today's action proposes revisions to the Clean Water Act section 403 regulations relating to Ocean Discharge Criteria for point source pollution to enhance the protection of the ocean environment and meet the goals of the Marine Protected Areas Executive Order.

It is clear that nearshore ocean waters are susceptible to the impacts of pollution, especially from adjoining surface and ground waters, nonpoint source runoff, and wastewater discharges. These areas are under ever increasing pressure from rising coastal populations which increase demands on space and resources. For example, the interagency Clean Water Action

Plan: National Coastal Condition Report, currently under peer review, presents data from 1990 to 1997 indicating that the Nation's estuaries are in fair condition based on seven indicators (water clarity, dissolved oxygen concentration, loss of coastal wetlands, eutrophic condition, sediment contamination, condition of benthic organisms, and accumulation of contaminants in fish tissue). The overall national rating score for five coastal areas of the United States (northeast, southeast, Gulf of Mexico, west, and Great Lakes) was 2.3 based on a 5-point scale where 1 is poor, 3 is fair, and 5 is good. Indicators rated the lowest throughout the United States were coastal wetland loss, sediment contamination, and benthic organism condition. Coastal areas in the northeast, Great Lakes, and Gulf of Mexico showed the poorest conditions overall.

In addition, EPA reported in The Quality of Our Nation's Waters (1998 Report to Congress) that the leading pollutants and sources of pollutants in ocean shorelines are from both point and nonpoint sources of pollution. Recent studies document a wide range of environmental problems in coastal waters including low dissolved oxygen levels, contamination of shellfish, contamination of water and sediment with metals and organic contaminants, and increased beach closings. Point sources of pollution to coastal waters are addressed primarily through the NPDES permit program. Nonpoint sources of pollution are addressed primarily through Section 319 of the Clean Water Act (CWA), under which each State and Territory has developed and is implementing an approved nonpoint source management program. These programs include a combination of non-regulatory programs and regulatory programs, technical and financial assistance, education, training, technology transfer, and demonstration projects. Congress provides funding each year to assist the States and Territory in implementing their approved programs. For FY 2001, Congress has appropriated $238 million to assist States and Tribes in

implementing their programs. EPA also addresses nonpoint sources through a number of other programs under the Clean Water Act, such as the Total Maximum Daily Load (TMDL) program, the CWA 305(b) program which assesses the health of our waters, the 303(d) program which lists and ranks impaired waters, and the Beaches Environmental Assessment, Closures and Health (BEACH) program which addresses the pollution of our beaches from fecal contamination. Another major program addressing the nonpoint source pollution problem in coastal waters is the Coastal Zone Act Reauthorization Amendments (CZARA). Section 6217 of CZARA requires all States and Territories with approved Coastal Zone Management Programs to develop Coastal Nonpoint Pollution Control Programs. In its program, a State or Territory describes how it will implement nonpoint source pollution controls, known as management measures, that conform with those described in Guidance Specifying Management Measures for Sources of Nonpoint Pollution in Coastal Waters. The State or Territory also must implement any additional management measures that may be needed to address remaining water quality problems. These programs update and expand upon Nonpoint Source Management Programs developed under section 319 of the Clean Water Act and Coastal Zone Management Programs developed under section 306 of the Coastal Zone Management Act.

Offshore ventures such as aquaculture, biotechnology, oil and gas drilling and production and other industrial activities are expanding into new areas of the ocean. As these activities move into and expand in the ocean environment, many will need to discharge wastewater as part of their operations, and thus require National Pollutant Discharge Elimination System (NPDES) permits for those discharges. Because those point source discharges are released in ocean waters, they must meet Ocean Discharge Criteria in addition to other applicable requirements of the

NPDES program. Today's proposed regulatory action will revise those Ocean Discharge Criteria, last published in 1980. While these activities are not the only ones with impacts to ocean resources, EPA believes that they can contribute significantly to the harm of these resources.

Monitoring reports by State agencies under the CWA, and reported in the Quality of Our Nation's Waters report, indicate that municipal and industrial point sources together account for over 40% of impaired shoreline miles. Municipal and industrial point sources were determined to be responsible for 25% and 15% of the impaired shoreline miles, respectively. This report also indicates that the top five sources of ocean shoreline impairment are urban runoff/storm sewers, land disposal, municipal point sources, spills, and industrial point sources.

B. What Has EPA Done to Reach out to the Regulated Community and Other Stakeholders Prior to Publishing this Proposed Rule?

Between July 25 and August 9, 2000, 182 individuals attended five public meetings held by EPA in the following cities: Washington, DC; Boston, MA; Portland, OR; Los Angeles, CA; and Tampa, FL. These meetings were announced in the Federal Register on July 12, 2000 (65 FR 42936). The purpose of the meetings was to obtain public comment on EPA's planned approach to revising the regulations that implement section 403 of the Clean Water Act. A list of attendees by organization and a summary of the comments received at these meetings can be found on EPA's website at: http://www.epa.gov/owow/oceans/protecting_oceans/ and at the Water Docket.

In addition to the Federal Register notice and website, EPA established an e-mail address

for comments. Individuals and organizations were also invited to the public meetings by e-mail. Letters were sent to coastal State water resource commissioners and Tribal councils informing them of the action to revise the regulations, inviting them to the public meetings and soliciting proposals for sites to be established as Special Ocean Sites. EPA has attended and spoken at various conferences and met with organizations such as the Association of State and Interstate Water Pollution Control Administrators (ASIWPCA), the Coastal States Organization (CSO), the National Ocean Industries Association (NOIA), EPA's Tribal Operations Committee, and environmental organizations in developing today's proposal. Fact sheets and outreach documents were also developed and distributed. In addition, EPA has held several interagency meetings with our Federal partners concerning this proposed action.

III. Summary of the Proposed Regulation

A. What Requirements Would Today's Proposed Regulation Establish?

Today's proposed regulation would make several key changes to existing regulations.

First, the proposed rule provides for establishment of baseline water quality standards for ocean waters beyond three miles offshore. These waters, designated "Healthy Ocean Waters," would be protected by both a narrative statement of desired quality and pollutant-specific numeric criteria.

Second, the proposed rule would strengthen the requirements for a permit to discharge to ocean waters. For example, the proposed rule would require dischargers requesting permits to consider alternative disposal sites and would require that no permit for a proposed discharge be

issued unless there is sufficient information to evaluate the impacts of the proposed discharge.

Third, the proposed rule would establish a number of Special Ocean Sites (SOSs). Special Ocean Sites are areas within ocean waters that are of outstanding value. The proposed rule would also establish a process for identifying, establishing, and managing SOSs, including a process to petition for the establishment of a SOS. Permits for new discharges and significantly expanded existing discharges would generally be prohibited in SOSs.

B. How Would Today's Proposal Affect Existing and New Discharges into Ocean Waters?

The proposed regulation would affect persons who presently hold permits to discharge to ocean water, or who plan to discharge to these waters, in three ways.

First, in the case of discharges to ocean waters beyond three miles offshore, discharge permits issued or reissued after the effective date of this regulation would need to comply with new water quality standards. These waters are to be designated "Healthy Ocean Waters." This designated use would be supported by pollutant specific numeric criteria. In addition, these waters would be protected by the application of an antidegradation policy.

Second, any person who seeks a permit for a new discharge or reissuance of an existing permit for a discharge to any ocean waters after the effective date of this regulation would be required to provide information necessary to implement the new requirements in the permit application. In addition, the standards for issuing a permit would be strengthened under the proposed rule. For example, the proposed rule would require dischargers requesting permits to consider alternative disposal sites and would require that no discharge permit be issued unless there is sufficient information to evaluate the impacts of the proposed discharge.

Third, new discharges and significantly expanded existing discharges (20% or greater increase in loadings beyond the current permit limit) into Special Ocean Sites would be prohibited under the proposed rule, unless the President waives this restriction because it is in the paramount interest of the country.

C. How Does Today's Proposal Affect Ocean-related Activities That Do Not Require a Permit in Compliance with Section 403?

Today's proposed regulation would not directly regulate any activities other than those that require an NPDES permit and compliance with Clean Water Act section 403. For example, recreational and commercial fishing would not be regulated under this rule (except for seafood processing vessels required to hold a CWA permit). Furthermore, EPA does not regulate discharges incidental to the normal operation of a vessel (40 CFR 122.3), therefore an ocean discharge permit would not be required for these discharges.

EPA intends to carefully consider the impacts of other activities it regulates on ocean waters and Special Ocean Sites. For example, although ocean dumping is regulated under the Marine Protection, Research, and Sanctuaries Act, EPA would be unlikely to designate ocean dump sites within SOSs or approve dumping permits in those areas. Also, EPA will work with States to designate those SOSs under their jurisdiction (within three miles of shore) as no-discharge zones (NDZ) under section 312 of the Clean Water Act. This designation as a NDZ will protect SOSs from the potential impacts associated with sewage discharges from vessels. Furthermore, there are other programs currently implemented by EPA and other Federal agencies and States to protect ocean waters from other sources of pollution. For example, the non-point

source control programs (CZARA section 6217 and CWA section 319) address pollutant runoff, while Coastal Zone Management Plans, National Estuary Programs, National Estuarine Research Reserves, and National Marine Sanctuaries address specific activities in certain ocean areas.

IV. Legal Background

A. The Clean Water Act

The Clean Water Act authorizes EPA to work with States and others to protect the waters of the United States, including ocean waters.

Section 303 of the CWA provides for the establishment of water quality standards by States, Territories, and Tribes, and by EPA where necessary to meet the requirements of the Act, that identify a designated use for waters (e.g., fishing/swimming). Other CWA programs use these standards as the basis for pollution control decisions intended to assure that standards are attained and maintained. States have adopted water quality standards for ocean waters within their jurisdiction (waters within three miles of shore). Under sections 301 and 304, EPA issues national effluent limitations guidelines and standards that establish uniform discharge standards based on treatment technologies that are available and economically achievable. All permits for dischargers in an industry that is covered by an effluent guideline must include effluent limitations that comply with the guideline, regardless of whether the discharge is to fresh or coastal waters. In addition, some effluent guidelines primarily affect coastal or ocean waters. For example, EPA has established effluent limitations guidelines for coastal and offshore oil and gas operations. Point sources for which no national effluent guidelines have been established are

required to achieve limits based on the Best Available Technology (BAT) economically achievable, as determined by the best professional judgment (BPJ) of the permit writer. All point sources are also required to implement additional water quality-based effluent limitations where necessary to achieve or maintain applicable water quality standards.

Section 402 of the CWA established the National Pollutant Discharge Elimination System (NPDES). All direct dischargers of pollutants from point sources to the surface waters of the United States are regulated under the authority of section 402 of the CWA and must obtain an NPDES permit before the discharge can take place. Permits are to implement effluent guidelines and must include effluent limitations as necessary to ensure the attainment and maintenance of water quality standards. NPDES permits are intended to control the release of pollutants into the waters under the jurisdiction of the United States from all point sources, including municipal, industrial, and some stormwater discharges. Section 402 authorizes EPA to issue NPDES permits. Section 402(b) of the CWA authorizes EPA approval of State permit programs for discharges from point sources and discharges from aquaculture projects, and section 405 governs use and disposal of sewage sludge. Hence, with EPA approval, a State may assume authority to issue NPDES permits for discharges to waters of that State.

Section 403 of the CWA provides for additional protection of ocean waters (i.e., waters seaward of the baseline that are within the jurisdiction of the CWA). Under section 403(a), EPA or an authorized State may not issue a permit for a discharge into ocean waters unless the discharge complies with the guidelines established under section 403(c). These guidelines are intended to determine degradation of the marine environment. Section 403(b) states that the requirements found in CWA section 402(d) regarding notification to the Administrator from

States regarding permit applications may not be waived in the case of discharges into State ocean waters (waters within three miles of shore). Section 402 of the CWA expressly requires that State and Federal NPDES permits comply with section 403 (33 U.S.C. 1342(a)(1) and (b)(1)(A); and 40 CFR 122.44(d)(7)). Existing NPDES permit regulations prohibit the issuance of a permit where insufficient information exists to make a reasonable judgment on whether the discharge complies with permitting requirements based on the 403 criteria (See 40 CFR 122.4(h)(2)).

Finally, section 403(c) provides that the Administrator shall promulgate guidelines for determining the degradation ocean waters, which shall include:

> (A) the effect of disposal of pollutants on human health or welfare, including, but not limited to plankton, fish, shellfish, wildlife, shorelines, and beaches.
>
> (B) the effect of disposal of pollutants on marine life, including the transfer, concentration, and dispersal of pollutants or their byproducts through biological, physical, and chemical processes; changes in marine ecosystem diversity, productivity, and stability; and species and community population changes;
>
> (C) the effect of disposal of pollutants on esthetic, recreation, and economic values;
>
> (D) the persistence and permanence of the effects of disposal of pollutants;
>
> (E) the effect of the disposal at varying rates, of particular volumes and concentrations of pollutants;
>
> (F) other possible locations and methods of disposal or recycling of pollutants including land-based alternatives; and
>
> (G) the effect on alternate uses of the oceans, such as mineral exploitation and scientific study.

Section 403(c) also states that in any case where insufficient information exists on any proposed discharge to make a reasonable judgment on any of the guidelines established pursuant to this subsection, no permit shall be issued.

B. How is Section 403 of the CWA Being Implemented Now?

In 1980, EPA revised the regulations under section 403 (45 FR 65942-65954). Under these regulations, discharges to ocean waters must comply with criteria that require an assessment of the impact of the proposed discharge on the biological community in the area of the discharge, as well as the surrounding biological communities. In assessing the potential effects of a discharge on the marine environment, the permitting authority must consider the effects on the receiving water ecosystem, while assuring that there is no unreasonable degradation of the marine environment.

If the permitting authority determines that the discharge will result in unreasonable degradation of the marine environment based on an evaluation of the 10 criteria listed in 40 CFR 125.122(a), then the permitting authority must impose appropriate restrictions on the discharge to assure that unreasonable degradation does not occur. These restrictions can include stipulations for temporal criteria (such as seasonal limitations on the discharge), process criteria (such as rate of discharge or dispersional requirements), or other factors.

If the permitting authority has insufficient information to determine that no unreasonable degradation will occur, no permit will be issued unless the applicant meets the following conditions. First, the applicant must demonstrate that the proposed discharge will not result in "irreparable harm" to the marine environment. "Irreparable harm" is defined as significant

impacts that occur after the time of initial discharge that will not be reversed or eliminated after the termination of the discharge. Second, the applicant must demonstrate that there are no reasonable alternatives to the onsite disposal of the material proposed to be discharged. Third, the applicant must comply with other applicable permit conditions, including effluent toxicity limits, specified monitoring requirements, and any other permit requirements based on local conditions.

C. How is CWA Section 403 Proposed to be Implemented?

Section 403(c) of the CWA directs the Administrator to promulgate guidelines for determining degradation of ocean waters. EPA promulgated such guidelines in 1980, but since then, EPA has had a great deal of experience in enhancing water quality based protection for U.S. waters. Particularly in the State water quality standards context, EPA has experience with designated uses, criteria to protect those uses and antidegradation policies, and has found these to be vital tools to accomplishing the goal of the Act to "restore and maintain the chemical, physical and biological integrity of the Nation's waters." CWA section 101(a). To that end, EPA believes it is reasonable to interpret section 403 of the Act to enable EPA to establish certain protections analogous to those in State waters for Federal waters. This would include a use designation of all Federal ocean waters as "Healthy Ocean Waters," establishment of a narrative criterion and certain numeric ocean water quality criteria to protect that use, and establishment of an antidegradation policy to ensure that a review is conducted before any lowering of water quality. By doing so, EPA intends to strengthen environmental protection for the ocean. Also, this proposed rule would provide for establishment of Special Ocean Sites that are of outstanding

ecological value. EPA proposes to prohibit the granting or significant expansion of any NPDES permit to those areas. EPA believes that applying this regulatory framework to ocean waters would be an effective way to accomplish the water quality goals of section 403 of the CWA.

V. Applicability of the Proposed Rule

A. Who Is Affected by this Proposed Rule?

This proposed rule would apply to any facility or activity discharging into ocean waters that is subject to regulation under the NPDES program, that is to say, where there is a discharge of a pollutant from a point source into ocean waters, including Federal, State, Territorial, and Tribal facilities. EPA does not regulate discharges incidental to the normal operation of a vessel (see 40 CFR 122.3). Ocean waters means the waters seaward of the baseline that are within the jurisdiction of the CWA. Because the proposed rule would apply to all point source discharges to ocean waters, this proposed rule would affect all existing ocean discharges as well as any new discharges to ocean waters.

In addition, the proposed regulation would provide a process for EPA to establish SOSs. Once these areas were established, no permits would be issued for new discharges to these waters, and no existing permits to these waters would be renewed if they propose an increase in pollutant loadings of 20% or greater above the existing permit limits (except under a Presidential waiver).

This proposed rule would also affect Federal, State, Territory, and Tribal governments. States, Territories, and Tribes authorized to issue NPDES permits for ocean discharges would

have to adhere to these new requirements. In addition, the proposed regulation would provide a process for EPA to establish SOSs.

B. How Will this Proposed Rule Apply to My Facility?

If your facility has a point source discharge to ocean waters, it must have and comply with the NPDES permit issued for that particular discharge. There are two types of permits in the NPDES program: individual and general permits. An individual permit usually involves one or more fixed outfalls (pipes) discharging from a single facility. A general permit is used to regulate multiple point sources which have the same (or similar) types of operations, discharge the same (or similar) types of wastes, are located in the same geographical or political boundary, and are covered by the same (or similar) effluent limitations and monitoring requirements. Examples of NPDES general permits issued by EPA for ocean discharges include those controlling discharges from oil and gas exploration, development and production operations, and from seafood processing facilities. In order to receive an NPDES permit to discharge to ocean waters, the discharge must comply with the requirements under sections 402 and 403 of the Clean Water Act. The implementing requirements of section 403 are the subject of today's proposal. The proposed rule would apply to individual NPDES permits as well as to general NPDES permits.

Under today's proposal, in State ocean waters (from the baseline to 3 miles offshore) where applicable State, Territorial, authorized Tribal, or Federal CWA water quality standards are in place, those water quality standards would continue to apply. At present EPA believes that all States, Territories and Tribes have applicable water quality standards in place. As a

precautionary measure, however, today's proposed rule would establish "Healthy Ocean Waters" (HOW) as the designated use for State ocean waters where applicable CWA water quality standards are not in place, as well as for waters beyond State ocean waters that are within the jurisdiction of the Clean Water Act. The proposed rule would establish a narrative criterion, pollutant-specific criteria, and an antidegradation policy for HOWs.

The proposed rule would set ocean discharge requirements that must be met by any point source discharges to ocean waters. For example, the rule revises existing regulatory provisions relating to the sufficiency of information and provides that permits are not to be issued without sufficient information with respect to the 403(c) criteria. The rule also clarifies and strengthens the requirements for applicants to provide information concerning a discharge.

The proposed rule also would establish certain ocean waters as SOSs and establish a procedure to identify, establish, disestablish, and manage these sites in the future. SOSs are specific areas within ocean waters that have significant outstanding ecological, environmental, recreational, scientific, or esthetic value. No permits for new or significantly expanded discharges would be allowed to waters of an SOS (except under a Presidential waiver).

C. How Would the Proposed Rule Affect New and Existing Ocean Discharges?

Under the proposed rule, existing discharges to HOWs would be subject to the provisions of today's proposed rule at the time of NPDES permit renewal. New discharges to HOWs would be subject to the provisions of today's proposed rule at the time of permit issuance. The permitting authority could issue an NPDES permit for a new or existing discharge to ocean waters provided that the discharge meets the provisions of proposed §§ 125.123 and 125.124.

Existing NPDES permits for discharges to an established SOS could continue and could be renewed provided that the discharge meets the applicable requirements of this rule and is not significantly expanded. Permits for new discharges and significantly expanded existing discharges (i.e., 20% or greater increase in pollutant loadings above the existing permit limit) would be prohibited in SOSs. The President could waive this prohibition based on a determination that a waiver is in the paramount interest of the country.

Where EPA proposes to establish or establishes an area as an SOS and there is an existing general permit authorizing discharges in the area, EPA or the State, Tribe, or Territory that issued the general permit may propose to modify the general permit to prohibit any additional notices of intent (to be covered by the permit) to be filed for new or significantly expanded discharges to the SOS. If a general permit covering an area established or proposed to be established as an SOS has expired, when the permitting authority proposes the new general permit, it may propose not to authorize any new or significantly expanded discharges to the SOS under the general permit.

D. What is the difference between Special Ocean Sites and Marine Protected Areas?

Marine Protected Areas (MPA) are defined in Executive Order 13158 as "any area of the marine environment that has been reserved by Federal, State, Territorial, Tribal, or local laws or regulations to provide lasting protection for part or all of the natural and cultural resources therein." Although areas designated as MPAs under other authorities may not meet the definition of an SOS, EPA believes an SOS established under this proposed rule or in a subsequent regulation would meet this definition of an MPA, and therefore should be considered for

inclusion in the national system of MPAs to be established under the Executive Order. EPA believes that the establishment of an SOS would not be appropriate for all ocean waters.

VI. Dischargers Potentially Subject to this Proposed Rule

Today's proposal would potentially affect NPDES discharges into ocean waters. There are 265 NPDES ocean discharge permits subject to section 403 compliance requirements. Of the 265 permits, 154 (or 58 %) were issued to POTWs, 22 (or 8%) were to industrial facilities or activities that discharge conventional pollutants, 61 (or 23%) were to industrial facilities or activities including storm water discharges that discharge toxic pollutants, and 28 (or 11%) were to electric utilities. Eleven general permits are also included in the 265 permits, and over 9,900 individual facilities have filed Notices of Intent to obtain coverage under these general permits. These general permits cover offshore oil and gas exploration and production facilities, seafood processors, and storm water discharges. EPA estimates that there are 2,761 entities covered under the oil and gas general permits. EPA estimates that there are approximately 211 entities covered under the seafood processing general permits. Dischargers under the storm water general permits are unclassifiable due to lack of data about the facilities. Brief discussions of the different types of facilities or activities whose discharge may receive an NPDES ocean discharge permit follow:

1. Publicly Owned Treatment Works: POTWs are owned and operated primarily by municipal governments, but also by other government agencies, for the purpose of treating municipal sewage and industrial wastes. The vast majority of affected POTWs discharge into State ocean waters (i.e., within three miles of shore). Small POTWs typically treat only domestic waste,

while large POTWs typically receive domestic sewage, and in addition may receive industrial wastes from multiple industrial sources. The POTWs regulate these indirect discharges of industrial wastes to the POTW through permits issued to the industrial users. POTWs must meet Federal effluent quality standards for secondary treatment, unless they hold a CWA section 301(h)-modified NPDES permit providing for a waiver of secondary treatment requirements and any more stringent water quality-based effluent limits. For all POTWs, industries discharging to POTWs must comply with pretreatment requirements, including categorical pretreatment standards and pollutant-specific local limits (40 CFR Part 403).

2. Coastal and Offshore Oil and Gas Facilities: Coastal and offshore oil and gas operations consist of drilling and production facilities located either in State ocean waters (within three miles of shore), or in Federal ocean waters. Wells are drilled from either single well structures or from multiple well platforms. Two major types of discharges are released from these structures: (1) drilling fluids and drill cuttings (from exploratory and development wells); and (2) produced water (from production facilities). Drilling fluids are slurries (typically 20-70% solids by weight) of solids and dissolved materials in a water or synthetic base that are used in rotary drilling operations to lubricate the drill bit and help control subsurface pressure. Five basic components account for approximately 90 percent by weight of drilling mud materials: barite, clay, lignosulfonate, lignite, and caustic soda. Waste drilling muds will contain all of these compounds as well as any of the contaminants that might be found in formation rock, which might include toxic or heavy metals, PAHs, and VOCs. Water-based muds have water as the carrier phase, although they may contain from 2% to 6% oil. Water-based muds containing free oil are not permitted for offshore discharge. Synthetic-based muds have recently been introduced

for drilling in difficult deep-water environments. The liquid phase (40-70% of volume) is a synthetic chemical, usually an olefin or ester. Other mud ingredients are similar to those in water-based muds. Permits are issued for two types of coastal and offshore oil and gas facilities: (1) exploratory facilities which are usually barges, semi-submersibles or drill ships that typically drill only a few wells at one site; and (2) production facilities which are usually fixed platform structures on which multiple wells are drilled.

3. Desalination Plants: Desalination plants remove dissolved solids (including but not limited to salts) from sea water, brackish water or treated wastewater. Membrane technologies such as reverse osmosis (RO), electrodialysis, electrodialysis reversal, electrodionization, and distillation technologies such as multiple effect distillation, and vacuum compression are commonly used for desalination of water. Desalination plant raw wastewater volume may be as high as 45-50% of the feed volume depending upon the technology employed. Its composition can be characterized as high total dissolved solids, suspended solids from filter backwash waters, coagulants such as ferric chloride, polyacrylic acids used as antiscaling agents, chlorine and other biocides used in the pretreatment of water before the RO, organics and metals contained in feedwater and rejected in the RO process. Typical salt concentrations in a seawater treatment plant wastewater are up to 80,000 mg/L, as compared to seawater salt concentration, which is about 35,000 mg/L.

4. Lumber and Wood Products: Harvesting practices of the lumber and wood products industry often result in material discharges into surrounding waters. The wastestream includes water effluent discharges from millpond overflow and generally consists of debarker water, boiler blowdown, and storm water runoff from the log decks in the area. Major pollutants in this wastewater include cyanide, settleable matter, coliform bacteria, and oxygen demanding

materials. Other pollutants that might be present in discharges include ammonia, and grease and oil. For log transfer facilities, the wastewater consists of bark, chippings and other wood debris, soil and oil and gas from vehicles.

5. Seawater Treatment Plants: Seawater treatment is a process phenomenon associated only with Alaska oil and gas processing, and results from the use of sea water to maintain pressure in an oil extraction well. Currently these plants have the capability to produce three wastewater flows. The primary flow is filter backwash, which is a frequent discharge. A second major, but intermittent, flow is the marine life return system flow, which is a flow carrying sea life separated from the intake back to the sea. The third flow is an option to discharge secondary treated sanitary wastewater, which is rarely used.

6. Seafood Processors: Most of these facilities are operating under a general permit which covers all but a handful of on-shore and off-shore facilities in Alaska. These facilities perform post-catch or post-harvest cleaning and processing of fish and seafood products, including preservation, prior to shipment to end users. The wastewater flows are typically small, less than 50,000 gpd per facility. The characteristics of the wastewater, which is mostly generated in both the seafood cleaning and facility cleaning process, include high levels of Total Suspended Solids (TSS), oil and grease, Biochemical Oxygen Demand (BOD), ammonia, and fecal coliforms.

7. Sugarcane Mills: Sugarcane mills refer to facilities where raw sugar cane is processed into crystalline refined sugar. Sugarcane production is generally vertically integrated, with companies growing their own sugarcane, doing their own milling, and supplying their own energy and water. Every stage in the sugar production process requires water. The majority of wastewater in sugar cane processing is produced during three stages: sugar cane washing, purification, and

evaporation. These stages produce a wastewater which is high in TSS, BOD, and pH. A typical plant has a capacity of from 5,000 to 20,000 tons of cane daily.

8. Petroleum Refineries: Major pollutants in raw wastewater stream from a petroleum refinery are Oil and Grease, Total Suspended Solids, Biochemical Oxygen Demand, Chemical Oxygen Demand, and non-conventional toxic metals like hexavalent chromium. Other major pollutants are hydrogen sulfide, ammonia, hydrogen cyanide, phenols, and mercaptans, which are specifically contained in wastewater originating from condensation of steam. Relatively large volumes of water are used by the petroleum refining industry. Four types of wastewater are produced: surface water runoff, cooling water, process water, and sanitary wastewater. Surface water runoff is intermittent and will contain constituents from spills to the surface, leaks in equipment and any materials that may have collected in drains. Surface water runoff will also include water coming from crude and product storage tank roof drains. A large portion of water used in petroleum refining is used for cooling. Cooling water typically does not come into direct contact with process oil.

9. Pulp and Paper Mills: As part of their manufacturing process, pulp and paper mills use huge quantities of water, on average 10 million gallons per day (MGD) per facility with a corresponding quantity of wastewater. There are specific effluent guidelines for the pulp and paper mill industry specified in 40 CFR Part 430. Net water use in pulp and paper production depends to a great extent on which manufacturing process is employed at the mill. The water usage could vary from 17 cubic meters per ton (m^3/ton) - 273 m^3/ton of product. Effluent flows and mass loadings of pollutants therefore vary greatly, depending on the size and the subcategory of the mill. Major pollutants in a raw waste stream from an integrated pulp and paper mill would

include TSS, BOD, Chemical Oxygen Demand, Total Organic Carbon, priority pollutants, color caused by lignin and its derivatives, phenols, and adsorbable organic halogens which collectively represent toxic chlorinated organic compounds such as dioxins and furans.

10. Petroleum Bulk Handling: The ability to efficiently handle and transport crude and refined petroleum products is an important aspect of the petroleum industry. Such transportation and handling operations often involve bulk quantities and are performed at terminals/facilities designed for specific petroleum handling activities. Examples of petroleum bulk handling facilities include bulk petroleum and liquid handling seaboard terminals, inland refinery oil depots, and aviation fuel facilities. Storm water contaminated with oil and other petroleum products from the product storage and handling area, product displacement process wastewater, wash down, fire hydrant system test waters, tank and other service tank water draws, constitute the principal sources of raw wastewater volume in a petroleum bulk handling terminal. Other raw wastewater streams generated within a terminal are typically concentrated, with high levels of grit and oil contamination originating from minor oil spills in fueling areas, material and equipment storage areas, and vehicle and equipment storage, cleaning, and maintenance areas of the facility.

11. Organic Chemicals: Various discharges from organic chemical manufacturers are regulated under section 403(c) of the Clean Water Act. The wastewater of these facilities generally consists of various levels of oxygen demanding materials, suspended solids, nitrogen, hydrocarbons, and various metals. Other compounds that might be present would include ammonia, and any of a number of metals used as catalysts. Potentially, many inorganic pollutants could also be present in the wastewater, which is a function of the particular

compounds manufactured.

12. Primary Metals: The primary metals industries include facilities that produce metal products from metal ore and/or scrap metal. Plants may refine metals, cast molten metal into desired shapes, or produce the inputs for the refining or casting process. Primary metals industries utilize both ferrous and non-ferrous metals and produce pure metal products or alloys in the form of end products or stock for use by other industries. Industry effluent limitations are found in 40 CFR Part 420 for the iron and steel industry and 40 CFR Part 421 for the non-ferrous metals (aluminum, copper, lead, zinc, *et al.*) industries. The primary source of wastewater is spent cooling water. This may include either direct contact cooling water or indirect cooling water. Direct contact cooling water is the most contaminated as it has come into contact with raw materials and various finished or intermediate products, and will contain both primary metals and trace metallic contaminants from the ores. Additionally, steel processing wastewaters may contain high molecular weight organic compounds, which are residuals of the coke manufacture operation. There will also be a storm water runoff stream that will have similar characteristics. Wastewaters may also contain quantities of oil and grease which are used both for preserving finished products and as forming aids during production operations.

13. Shipbuilding: The shipbuilding industry encompasses original or new construction, as well as ship renovation or rebuilding. Wastewater streams from both operations are similar in their contaminant profile. Typical shipyard wastewater sources would include: pressure washing (including pre-paint cleaning/surface prep and de-painting wastewater), storm water runoff, bilge water, and ballast water. The last two sources are more common during rebuilding operations. A typical shipyard may be classified as a small wastewater volume source with a wastewater

volume on the order of 75,000 gallons per day (gpd). There appear to be no categorical effluent limitations. The pressure washing water will contain residual paint solids with an anti-fouling agent included, which is typically an organometallic or inorganic compound, as well as degradation products of the anti-fouling agent. Both the anti-fouling agent and the degradation by-products (heavy metals and toxic organics) may cause adverse environmental impacts.

14. Brine Disposal: All of the facilities that dispose of brines in the ocean are involved in the petroleum products bulk storage industry where salt formations have been mined to create geologically stable underground storage caverns. The brines result from both the mining process, where solution mining was used to form the caverns, and the storage and retrieval process, where water is pumped in to pressurize the cavern and force petroleum out. The raw or untreated wastewater will contain low levels of crude oil, along with its associated contaminants, and salt. A typical maximum flow is on the order of three MGD. Other brine disposal facilities with similar storage and retrieval operations use deep well injection.

15. Electric utilities: Electric utilities as discussed here include any steam-driven generating units. This includes fossil fuel-fired and nuclear facilities. From the point of view of wastewater generation and treatment, the two types of plants are almost indistinguishable, with the exception of wastewater from the Flue Gas Desulfurization (FGD), ash handling and boiler blowdown operations that are part of the typical operations of a fossil fuel-fired plant. Electric utilities generate many types of wastewater that may be treated separately. The first is a small volume of sanitary wastewater, which has an identical composition to POTW influent. The sanitary wastewater volume from a typical electric utility is small, on the order of 10,000 gpd. The process wastewater from fossil fuel-fired plants includes boiler feed waste or boiler blowdown,

with an expected volume on the same order of magnitude as sanitary wastewater. The boiler blowdown wastewater stream has an extremely low content of contaminants, including primarily corrosion control agents in the range of micrograms per liter (µg/L). Another type of wastewater is from the boiler make-up water treatment process. This wastewater normally has moderate volume, on the order of 1,000 gpm per 1,000 MW capacity, but is concentrated in minerals content by a factor of 10 or more relative to the inlet water. There is also wastewater from the ash handling system of a fossil fuel-fired power plant. This is characterized as having high concentrations of heavy metals, dissolved and suspended solids, and organometallic compounds. There is also an FGD blowdown wastewater stream, characterized by chlorine, dissolved and suspended solids, and potentially metals. The most significant volume of wastewater is cooling water. Once through cooling systems, a common cooling system configuration, especially in water-available situations, can generate 400,000 gpm of wastewater per 1,000 MW installed capacity.

16. Aquaculture: Aquaculture for the purposes of this discussion includes captive, commercial seafood production, research, conservation, or public displays of marine life such as zoos and aquaria. No information on discharges was available through EPA's permit compliance system (PCS) database, so an assumption was made as to the allowable wastewater discharges based upon similarities and differences of this category with others. The assumption made was that the baseline discharged wastewater profile or characteristics would differ only slightly in contaminant concentrations relative to the incoming ocean water supply. The untreated wastewater will, in most cases, not be much different from sanitary wastewater. The primary differences would be the increased levels of salt, and the decreased levels of synthetic organic

materials which might be found in the wastewater at a POTW. Information readily available for aquaculture facilities indicates that the wastewater flows are on the order of 1 to 4 MGD. Major pollutants are TSS, BOD, nitrogen, phosphorus, and toxic substances. Various pathogens may also be present (10^4 - 10^9 per 100 mL). Sources of these contaminants include mammal and fish biowaste and excess food.

17. Storm Water Discharges: Storm waters result from the collection of precipitation on paved or semi-permeable surfaces and are present at many types of facilities. A general characterization of storm water volume is nearly impossible as the flow rate or volume will be dependent upon both the size and intensity of the precipitation event, and hydrogeologic conditions, e.g., degree of soil saturation, prevailing at the start of the event. Similarly, estimating composition is difficult as the level of contamination present in storm water results in part from the time interval between precipitation events and the magnitude of the events, as well as the rate of deposition of contaminants on the soil surface. A longer time interval between storm events would yield a greater concentration of contaminants in storm water discharge. This occurs because the longer time interval will allow for more accumulation of pollutants in the runoff. Also, the magnitude of the storm event will impact how much of the pollutants deposited on impermeable surfaces or in the soil will become dislodged and washed into the storm drain.

18. Pharmaceuticals: The US EPA recognizes four distinct subcategories within the pharmaceutical manufacturing industry: Subcategory A (Fermentation); Subcategory B (Extraction); Subcategory C (Chemical Synthesis); and Subcategory D (Mixing, Compounding, and Formulating). By the nature of the manufacturing operations, it is to be expected that the majority of the pollutants discharged are non-toxic in the amounts discharged. For Subcategory

D operations, the use of food grade (or FDA approved) materials is emphasized, which implies limited toxicity of the potential waste products. However, the industry is still required to meet conventional wastewater treatment limits, which may have little relationship to the chemistry of its individual wastewater components.

19. Sulfur Extraction: Sulfur mining is done by using the Frasch process. In this process, superheated water (116 °C) is injected into the sulfur deposit. The high temperature of the water melts the solid sulfur into a molten liquid. The liquid sulfur is then pumped to the surface with the aid of compressed air. These deposits are generally very pure, in excess of 99 percent sulfur, with contaminants being crude oil, natural gas, and salt, materials that are co-located with the sulfur deposits having been formed at approximately the same geological time. Specific effluent limitation guidelines are found in 40 CFR 436.190 through 436.192.

VII. Environmental Impacts Associated with Ocean Discharges

A. What Factors Influence the Environmental Impacts Caused by Ocean Discharges?

The potential for, and the type, degree of severity, extent, and duration of impacts from ocean discharges depend on many site-specific considerations, as well as the nature of the discharge, which may differ by category of discharge.

The site specific considerations include physical, chemical and biological conditions in the immediate vicinity of the discharge and larger scale processes in space and time that affect the area of the discharge. Receiving water characteristics include water structure, dynamics, small and large scale processes, and the presence of other point or non-point sources of pollution.

For example, water column stratification from density differences that result from temperature and salinity differences (seasonal temperature differences, river runoff), large scale currents, and their interaction with the seabed topography, gyres, eddies, tides, water masses, plumes from other anthropogenic activities, are all factors that can affect the potential for impact of the discharge.

These factors determine the transport, fate and the resultant exposure of marine organisms and humans to the impact-producing factors of the discharge. These factors affect biological conditions, including the biological communities, and their responses to the changes in physical, chemical and biological stresses that may result from the discharge.

Biological considerations affecting the nature of impacts from the discharge include: the vulnerability of the area potentially affected by the discharge; its role in the larger biological community; relationships and interactions within and between components of the biological communities; areas associated with critical stages in the life cycle, such as spawning grounds, nursery grounds, forage areas, migratory pathways, or areas necessary for other functions; areas of high productivity; areas under stress due to biological or climatic conditions; and discharges from other sources. They also include distinctive or unique habitats with limited distributions, such as kelp forests, seagrass beds, seamounts, chemosynthetic communities, and areas supporting marine and wildlife species that are listed as endangered or threatened under the Endangered Species Act. Biological considerations also include site-specific uses such as the presence of commercial, subsistence or recreational fisheries, and use of the site for recreational activities, scientific investigations, and public water supplies.

The nature of the discharge refers to many factors that affect the potential for impact,

including location, type, volume, frequency, timing, physical and chemical characteristics, toxicity, potential for bioaccumulation or persistence in the environment, design of outfall, diffuser (or other means of discharge).

Most discharges are characterized by conventional pollutants, such as TSS, BOD, pH, temperature, salinity, and non-conventional, toxic and other types of pollutants, such as heavy metals, pesticides, nutrients, and pathogens, such as bacteria and viruses. These discharges, interacting with the physical, chemical, and biological processes, can result in direct, indirect, immediate, long-term, and/or cumulative impacts on the marine organisms that depend on or live parts or all of their lives in the water column, on and in the seabed, as well as in human health effects through direct exposure and consumption of seafood.

B. What Types of Environmental Impacts May Result from Ocean Discharges?

Environmental impacts resulting from ocean discharges may include changes in composition, diversity, and productivity of biological communities, threats to human health through direct exposure to pollutants (e.g., swimming) or exposure to or consumption of exposed aquatic organisms; loss of esthetic, recreational, scientific or economic values. Some examples include direct smothering from particulates, changes in bottom sediments from increases in organic loads, changes to grain sizes and composition, increased turbidity, decreasing light penetration, phytoplankton blooms from nutrient enrichment, sediment resuspension and transport resulting in lower dissolved oxygen in the water column from accumulating settled materials, zooplankton accumulating discharged particulates and adsorbed toxic pollutants, and these toxic materials moving to the seabed through fecal deposits, and up the food chain, to fish,

marine mammals, seabirds and humans.

Discharges can result in changes in community or ecosystem structure or function. They can affect species composition, abundance, biomass, dominance, diversity, distribution in space and time, growth and reproduction, disease presence and frequency, trophic structure and productivity patterns, presence or absence of certain indicator species, bioaccumulation of toxic materials, and occurrence of mass mortalities of invertebrates, fish, birds, and mammals. Ocean discharges may also result in damage to distinctive habitats of limited distribution, e.g., kelp communities, coral reefs, and seagrass beds. Because most of the taxa in these communities are highly dependent on the major taxa that characterize the communities (and create habitat niches), the loss of those major taxa due to pollutant impacts may result in destruction of the community. In cases where a community or ecosystem is highly dependent on a limited number of major taxa to provide habitat for a wide variety of dependent species, any loss or decline in the health of those major taxa may be an adverse impact.

In communities where pollutant impacts result in changes in species composition or abundance, but not the destruction of the habitat, impacts are more difficult to assess. A major change in the function (e.g., trophic relationships; trophic structure, species interactions/interrelationships) of a community (e.g., benthic infauna, demersal fishes) affects, or has the potential to affect, all of the major elements of the ecosystem. An environmentally protective assumption is that a major change in the structure (i.e., species composition and abundance) of a community indicates that a change in the function of the community has occurred, even if a change in function cannot be demonstrated. EPA also considers other factors such as the spatial extent of discharge-related biological and intercommunity effects.

C. How Will EPA's Actions Help the Oceans?

Ocean habitats are very diverse, ranging from seagrass beds and kelp forests, to coral reefs and open ocean waters, deep ocean canyons and hydrothermal vents. The nation's ocean and coastal habitats support some of the most valuable and diverse biological resources on the planet, including 66% of all U.S. commercial and recreational fish and shellfish, 45% of all protected species, 50% of nongame migratory birds, 30% of migratory waterfowl, and thousands of other species. More than 180 million Americans visit the coasts each year supporting the tourism industry, which is the second largest contributor to the U.S. Gross Domestic Product. Ocean and coastal habitats also support a commercial fishery contributing $45 billion annually.

Unfortunately, as important as they are, some parts of the oceans are being threatened by pollution, and the competition for ocean resources continues to increase. Coastal populations are rapidly increasing, generating more pollution and increasing demands on space and resources. These demands often include the need for ocean outfalls to dispose of treated waste through Publicly Owned Treatment Works (POTWs). Offshore activities such as oil and gas drilling, aquaculture, and harvesting organisms for biotechnology are expanding into new areas. The proposed rule provides for strengthening ocean protection by addressing point source discharges in three key ways.

First, the rule would establish baseline water quality standards for ocean waters within the jurisdiction of the CWA beyond three miles offshore. These waters, designated "Healthy Ocean Waters," would be protected by both a narrative statement of desired quality and pollutant-specific numeric criteria. Existing regulations provide that permit authorities "consider" water quality criteria in issuing ocean discharge permits, regardless of whether the criteria are adopted

by States and approved by EPA as enforceable standards. In the case of Federal ocean waters (waters more than three miles offshore that are within the jurisdiction of the CWA), there are currently no water quality standards in place. Under the proposed regulations, EPA would be able to require that all discharges to Federal ocean waters at a minimum meet these Federal water quality standards. This development ensures adequate baseline protection for ocean waters and nationwide consistency for the regulated community.

Second, the proposed rule would strengthen the requirements for a permit to discharge to ocean waters. For example, the proposed rule would require dischargers requesting permits to consider alternative disposal sites and would require that no discharge permit be issued unless there is sufficient information to evaluate the impacts of the proposed discharge.

Finally, the proposed rule would establish a number of Special Ocean Sites (SOSs). SOSs are areas within ocean waters that are of outstanding value. The proposed rule would also establish a process for identifying, establishing, and managing SOSs, including a process to petition for the establishment of an SOS. New discharges and significant expansions of existing discharges would generally be prohibited in SOSs.

Most programs now being implemented to protect coastal and ocean waters under the Clean Water Act are based on environmental standards that apply equally to all ocean waters, regardless of the relative environmental significance of the waters. There is a growing recognition, however, that some coastal and ocean waters are especially important to the ecological health of the oceans or contain irreplaceable natural features.

Following the land model of the National Park System which has preserved millions of acres of critical habitat for the enjoyment of future generations by setting aside areas of particular

ecological integrity and importance, EPA's establishment of the first Special Ocean Sites is a vital step toward protection of unique habitats such as coral reef ecosystems, hydrothermal vent communities, critical habitat as designated under the Endangered Species Act, unique or irreplaceable breeding/spawning/nursery areas, and other areas critical to the life histories of marine organisms, from the potential impacts of pollutant discharges. The establishment of Special Ocean Sites and EPA's prohibition on permits for new and significantly expanded discharges into these areas of outstanding ecological integrity will help to protect our ocean resources for generations to come.

VIII. Section-by-Section Analysis

This proposed regulation would replace the current Part 125, Subpart M on Ocean Discharge Criteria. It also modifies provisions in Parts 122 and 123 of the NPDES permit regulations.

Section 122.44 Establishing limitations, standards, and other permit conditions

Section 122.44(d)(7) requires that all NPDES permits, including those issued by authorized States, must incorporate section 403(c) criteria under Part 125, Subpart M for ocean discharges. In today's proposal, EPA is proposing to replace the term "ocean discharges" with "discharges to ocean waters (as defined at 40 CFR 125.121)." This revision is intended to provide better consistency with respect to the terminology used in § 122.44(d) and Part 125, Subpart M. EPA describes the proposed revisions to the ocean discharge criteria under §§

125.123, 125.124, and 125.125, below.

Section 123.25 Requirements for Permitting

This provision lists the Clean Water Act requirements that State NPDES programs are required to have the legal authority to implement. In today's proposal, EPA is amending § 123.25(a)(36) to make it clear that State permit programs must have the authority to implement the Ocean Discharge Criteria contained in Part 125, Subpart M. In 1980, when EPA initially promulgated Part 125, Subpart M, it neglected to include a reference to Subpart M in § 123.25. See generally 45 FR 65942-65954 (Oct. 3, 1980).

Despite absence of this reference, the Clean Water Act and a separate provision of the NPDES regulations require that State NPDES permits comply with the Ocean Discharge Criteria. Section 402(b)(1)(A) of the Clean Water Act requires that State-issued NPDES permits apply and ensure compliance with section 403. The NPDES program regulations at 40 CFR 122.44(d)(7) require that all NPDES permits, State and Federal, incorporate CWA section 403(c) criteria under Part 125, Subpart M for ocean discharges. However, the continued absence of a reference to Part 125, Subpart M in § 123.25 may lead to confusion among some authorized States and the regulated community as to the applicability of the ocean discharge criteria for State NPDES permits. Consequently, EPA is adding that reference in today's proposed rule.

Section 125.120 Scope and Purpose

Today's proposed regulation would make several key changes to existing regulations at Part 125.

First, the proposed rule would provide for establishment of baseline water quality standards for ocean waters beyond three miles offshore. These waters, designated "Healthy Ocean Waters," would be protected by both a narrative statement of desired quality and pollutant-specific numeric criteria.

Second, the proposed rule would strengthen the requirements for a permit to discharge to ocean waters.

Third, the proposed rule would establish a number of Special Ocean Sites (SOSs) which are areas within ocean waters that are of outstanding value. The proposed rule would also establish a process for identifying, establishing, and managing SOSs, including a process to petition for the establishment of an SOS. Permits for new discharges or significant expansions of existing discharges would generally be prohibited in SOSs.

Section 125.121 Definitions

EPA is changing the Definitions section in the proposed regulation to correspond to changes in other sections of the rule.

EPA is proposing to define "baseline" as the line of ordinary low water along that portion of the coast which is in direct contact with the open sea, and the line marking the seaward limit of inland waters.

EPA is proposing to define "ocean waters" as waters seaward of the baseline that are

within the jurisdiction of the Clean Water Act. EPA notes that this definition of "ocean waters" covers the same areas as the term "marine environment" in the current Subpart M regulation (40 CFR 125.121(b)). EPA believes that the term "ocean waters" is a better and more commonly understood term to refer to coastal and offshore waters than "marine environment." EPA also believes that it would be less cumbersome to refer to all coastal and offshore waters with one term (i.e., "ocean waters"), than to refer to the three separate terms in the Clean Water Act (i.e., territorial seas, contiguous zone, and ocean). Since the passage of the CWA, on-going developments in international law and U.S. treaty obligations have altered the precise jurisdiction of nations over marine waters. Therefore, the definitions in the CWA are different from currently recognized international terminology. Use of the term "ocean waters" in this rule is not intended to in any way change the scope of jurisdiction of section 403 of the CWA as determined under current law.

EPA is proposing to define "State ocean waters" as ocean waters from the baseline to three miles seaward from the baseline.

EPA is proposing to define "Federal ocean waters" as ocean waters beyond three miles from the baseline.

EPA is proposing the term "Healthy Ocean Waters" as the designated use for all ocean waters where there are no applicable CWA water quality standards in place (as determined by the provisions in 40 CFR 131.21(c)). This includes all Federal ocean waters, and any State ocean waters where applicable CWA water quality standards are not in place. (Note that for specific waters where applicable State, Territorial, authorized Tribal, or Federal CWA water quality standards are in place, those water quality standards continue to apply.) Healthy Ocean Waters

must meet the standards established in proposed § 125.123(b). Discharges into Healthy Ocean Waters must also meet the requirements in proposed § 125.124.

EPA is proposing a new definition, "Special Ocean Sites" (SOSs), which replaces the concept "Special Aquatic Sites" in the existing regulation (see 40 CFR 125.122(a)(4) and (5)). EPA is proposing a definition that includes those sites which are of outstanding ecological, environmental, recreational, scientific, or esthetic value. EPA is proposing that no permits for new or significantly expanded discharges are to be issued for these sites (except under a Presidential waiver). EPA is requesting comment on the new definition of SOSs, especially as it relates to protected areas established under other authorities. A more detailed description of SOSs may be found later in this preamble.

EPA is proposing to include within the Special Ocean Site a minimum 1,000 meter wide band of water extending all the way around the high value area, or a larger band if the Administrator determines that a larger area is required to protect a particular high value area from pollutants or pollutant parameters that originate from outside of the Special Ocean Site.

EPA is proposing to define the term "significantly expanded discharge" to mean a discharge with a twenty percent or greater increase in pollutant loadings above the current permit limit. Twenty percent is consistent with EPA's "Guidance Manual for the Use of Production-Based Pretreatment Standards and the Combined Wastestream Formula," September 19, 1985. There, the Agency stated that an industrial user (IU) is required to notify the Control Authority immediately where the IU's average production and flow rate data have "significantly" changed. The guidance further explains that as a general rule, the average rate is considered to have changed significantly if the change is greater than twenty percent. Where there is a significant

change in these rates, it is suggested that the Control Authority reevaluate the limits in the IU's permit. In the preamble to the revision to the General Pretreatment Regulations for Existing and New Sources, 53 FR 40562, 40565, October 17, 1988, EPA confirmed the use of twenty percent as the level at which an average rate is considered to have changed significantly. The Agency stated that "for purposes of today's rule, any increase or decrease in production (or flow) rates will generally be deemed significant if the change is equal to or greater than twenty percent of the long term average production (or flow) rates at the facility." EPA is today proposing a twenty percent increase in pollutant loadings above the current permit limit as the threshold level which defines a significantly expanded discharge for ocean discharges to an SOS as well. This definition does not prevent the cumulative expansion of a discharge over the course of multiple permit renewals from exceeding twenty percent. EPA also considered preventing the cumulative expansion of a discharge from exceeding twenty percent by determining baseline loadings into the SOS at the time the SOS is established, then determining at each permit renewal whether a discharge to the SOS exceeds that initial baseline by twenty percent. EPA requests comment on whether, and if so how, this issue of cumulative expansion might be addressed in the final regulation. In the general permit context, EPA proposes that after the effective date of the final rule, EPA would, in all general permits, determine the scope and projected discharges to Special Ocean Sites that would be authorized by the permit over the permit term. EPA could include this explicitly in the applicability section of the permit or could include it in the administrative record for the permit. This would provide a baseline upon which to determine if there are significantly expanded discharges to Special Ocean Sites as defined in proposed 40 CFR 125.121(f).

The term "Administrator" is used in the current regulation and is defined at 40 CFR

122.2. EPA is proposing to repeat that definition in this Subpart.

The term "Director" is used in the current regulation and is defined at 40 CFR 122.2. EPA is proposing to repeat that definition in this Subpart, with one minor change for clarity (i.e., indicating that "Director" refers to the permitting authority).

EPA is proposing to delete the definitions of "irreparable harm" and "no reasonable alternatives" found in the current regulation because they pertain to another section which EPA is proposing to delete (i.e., the section on issuing a permit when there is insufficient information to make a determination that there will be no unreasonable degradation (40 CFR 125.123(c)). These changes are discussed further under proposed § 125.124(c), below.

EPA is proposing to delete the definition of "unreasonable degradation of the marine environment," and replace it with a better defined, environmentally-based standard. This change is discussed further under § 125.124(b).

EPA is proposing to delete the definition of "mixing zone," but is not proposing to prohibit the use of mixing zones. Under the proposed regulation, mixing zones in Healthy Ocean Waters may be designated on a case-by-case basis consistent with other pertinent sections of this proposed regulation (see proposed § 125.123(b)(4)). Mixing zones in waters where there are applicable CWA water quality standards in place are not affected by this proposed regulation. The mixing zone definition in existing 40 CFR 125.121(d), which would be deleted by the proposed rule, provides for mixing zones to extend to the boundary of the zone of initial dilution as calculated by a plume model approved by the Director in cases where this distance would exceed 100 meters. While this language has been deleted from proposed § 125.123(b)(4) for simplicity, the proposed language continues to allow for a determination by the Director that

"another definition of mixing zone is more appropriate for a particular discharge." The proposed language is not intended to change existing practice in this respect. We are proposing to add a clarification to the mixing zone provision that explicitly maintains water quality in the surrounding ocean environment and that meets public expectations for ocean uses.

Section 125.122 What ocean discharge requirements apply to you?

The table in this section presents a summary of the discharge requirements that apply to applicants for an NPDES permit to discharge to ocean waters. These requirements are found in proposed §§ 125.123 and 125.124.

Section 125.123 What standards are established for ocean waters under section 403(c) of the CWA?

The term "applicable CWA water quality standards" in paragraph (a) refers to State, Territorial, authorized Tribal, and Federal standards that are adopted as required by CWA section 303(c). Under section 303(c), States have the lead in developing water quality standards for waters of the U.S. under their jurisdiction. As a result of a recent regulatory change (65 FR 24641), new and revised standards adopted by States, Territories, and authorized Tribes after May 30, 2000, become "applicable standards for Clean Water Act purposes" only when approved by EPA. Standards in effect under State, Territorial, and Tribal law and submitted to EPA before May 30, 2000, may still be used for Clean Water Act purposes, whether or not approved by EPA,

until replaced by Federal water quality standards or approved State, Territorial, or Tribal standards.

As part of the review and approval process, EPA determines if State, Territorial, and authorized Tribal water quality standards are consistent with the CWA, including designating uses consistent with the goals of the CWA as expressed in section 101(a). Section 101(a) establishes an objective to restore and maintain the chemical, physical, and biological integrity of the Nation's waters and sets a national interim goal that, wherever attainable, water quality provide for the protection and propagation of fish, shellfish, and wildlife and provide for recreation in and on the water. Section 303(c) water quality standards consist of designated uses, criteria to protect those uses, an antidegradation policy, and any implementation procedures such as variances or mixing zones.

The goals of the CWA, as articulated in section 101(a), apply to Federal ocean waters equally as well as to State ocean waters. EPA believes that adopting a structure analogous to section 303(c) water quality standards as part of the guidelines for determining degradation of ocean waters under section 403(c) is appropriate for meeting the goals and objectives of the CWA. Designated uses establish public expectations for the Nation's waters, criteria establish the minimum requirements of water quality to meet those uses, and a policy of antidegradation ensures that high quality water is maintained and protected as a public resource.

Paragraph (a) of this section makes clear that in any State ocean waters where applicable State, Territorial, authorized Tribal, or Federal CWA water quality standards are in place (as determined by the provisions in 40 CFR 131.21(c)), those water quality standards apply. As proposed in the definitions section, any State ocean waters where there are no applicable CWA

water quality standards in place are designated as Healthy Ocean Waters. Based on EPA's survey of States, Territories, and authorized Tribes, EPA believes that there are applicable CWA water quality standards currently in place in all State ocean waters. Therefore, the ocean waters designated as Healthy Ocean Waters would be those beyond three miles. EPA solicits comment from States, Territories, and Tribes on EPA's assessment that all waters within their jurisdiction do, in fact, have applicable CWA water quality standards in place.

The narrative criterion proposed in subparagraph (b)(1) specifies that Healthy Ocean Waters "support a balanced, indigenous population of aquatic life and wildlife." The term "balanced, indigenous population," or BIP, appears in Clean Water Act sections 301(h) and 316 as a criterion to assure that water quality that is necessary to support and protect healthy ecological communities will be attained and maintained in the presence of discharges from certain types of facilities. The BIP concept is a means to measure or determine if there are cumulative adverse effects on the environment through use of biological assessment. The term "population" does not mean a reproducing unit of a single species, but rather all biological communities existing in the receiving water body. Similarly, the terms "aquatic life" and "wildlife" mean any and all biological communities that may be adversely affected by a discharge, not individual members of a species. A BIP is an ecological community that exhibits characteristics similar to those of nearby, healthy communities existing under comparable but unpolluted environmental conditions. The permit applicant's biological assessment could include evaluations of species composition, abundance, biomass, dominance, and diversity; spatial/temporal distributions; growth and reproduction of populations; disease frequency; trophic structure and productivity patterns; and the presence or absence of certain indicator

species.

EPA proposes the BIP terminology to be consistent with other regulatory biological assessments. In developing this proposal, EPA considered using a more contemporary definition of biological integrity such as "the ability to support and maintain a balanced, integrated, and adaptive community with a biological diversity, composition, and functional organization comparable to those of natural aquatic ecosystems in the ocean with similar physical, chemical, and biological characteristics." EPA seeks comment on the preferred terminology.

In 1976 EPA recommended the following narrative criteria for "aesthetic qualities" under section 304(a) of the Clean Water Act (republished in National Recommended Water Quality Criteria-Correction, EPA, April 1999, EPA 822-Z-99-001; 63 FR 68354; and 64 FR 19781):

All waters free from substances attributable to wastewater or other dischargers that:

(1) settle to form objectionable deposits;

(2) float as debris, scum, oil, or other matter to form nuisances;

(3) produce objectionable color, odor, taste, or turbidity;

(4) injure or are toxic or produce adverse physiological responses in humans, animals or plants; and,

(5) produce undesirable or nuisance aquatic life.

In surveying current section 303(c) water quality standards for ocean waters, EPA found that many States include narrative criteria similar to the above recommendation. These statements are more specific than the broad statement of desired condition proposed in subparagraph (b)(1). EPA seeks public comment on the additional establishment of those

narrative criteria, as well as an additional item that addresses the bioaccumulation of toxic chemicals in tissue to levels that result in increased health risks to subsistence, recreational, and general human consumers and to resident or migratory wildlife.

Subparagraph (b)(2) establishes specific numeric criteria to protect aquatic life from the toxic effects of specific pollutants. EPA selected criteria that 1) are based on EPA's 1980 or 1985 guidelines for deriving aquatic life criteria and 2) are based on a final chronic value, or FCV (or final acute value, or FAV) as opposed to a final residue value, or FRV. Thus, endpoints are based on direct exposure to water and not tissue levels correlated to water using a bioconcentration factor (BCF). EPA is in the process of revising our criteria development methodology to address bioaccumulation rather than bioconcentration because BCFs simply reflect partitioning between water and tissue, whereas bioaccumulation factors (BAFs) represent food chain accumulation.

An aquatic life criterion derived using EPA's CWA section 304(a) method "might be thought of as an estimate of the highest concentration of a substance in water which does not present a significant risk to the aquatic organisms in the water and their uses." (45 FR 79341.) EPA's 1985 *Guidelines for deriving numerical national water quality criteria for the protection of aquatic organisms and their uses* (PB85-227049) are designed to derive criteria that protect aquatic communities. The selected criteria for toxic pollutants are based on a toxicity data base that include at least the minimum number of genera and are considered protective of both near-shore and deep-water aquatic communities from the direct toxic effects of the specific pollutant. These criteria are scientifically defensible and available to the Agency at this time. The criteria selected are derived using EPA’s most recently published procedures for criteria derivation (e.g.,

EPA's 1985 guidelines referred to above). Criteria recommendation derived using older guidance (e.g., "Red Book" values) or criteria recommendations for pollutants or pollutant parameters that are undergoing revision at this time are not included as specific numeric criteria to be met under subparagraph (b)(2). Any future additions of specific criteria to the tables in subparagraph (b)(2) would occur through separate notice and comment rulemaking.

Numeric aquatic life criteria derived using EPA's 1985 Guidelines are expressed as short-term and long-term averages, rather than one number, to more accurately reflect toxicological and practical realities. The combination of a criterion maximum concentration (CMC), a short-term concentration limit, and a criterion continuous concentration (CCC), a four-day average concentration limit, are designed to provide protection of aquatic life and its uses from acute and chronic toxicity to animals and plants, without being as restrictive as a one-number criterion (1985 Guidelines, pages 4 and 5).

The two-number criteria are intended to identify average pollutant concentrations which will produce water quality generally suited to maintain aquatic life while restricting the duration of excursions over the average so that total exposures will not cause unacceptable adverse effects. Merely specifying an average value over a time period may be insufficient unless the time period is short, because excursions higher than the average may kill or cause substantial damage in short periods.

A minimum data set of eight specified families is recommended for criteria development (details are given in the 1985 Guidelines, page 22). The eight specific families are intended to be representative of a wide spectrum of aquatic life. For this reason it is not necessary that the specific organisms tested be actually present in the water body. EPA believes that application of

its guidelines to develop the criteria matrix in this rule is appropriate for all ocean waters of the United States. However, given the variations in ocean waters and their ecosystems over the vast area subject to CWA jurisdiction, EPA recognizes that it may be appropriate to tailor requirements for Healthy Ocean Waters, including applicable numeric criteria, to specific circumstances. EPA requests comment on how such revisions would best be accomplished.

EPA recognizes that there are many other pollutants and protection endpoints that may need to be addressed in permits. EPA further recognizes that both the need to address other pollutants and protection endpoints and the specific permit provisions required to meet Healthy Ocean Waters may vary depending on the specific discharge location. The Director may determine that numeric limits or other provisions are necessary to meet the narrative criterion established in subparagraph (b)(1). These pollutants or pollutant parameters include, but are not limited to, future criteria recommendations for human health, aquatic life, or wildlife protection. Pollutant parameters may refer to measures of water quality, such as temperature, that are properties of the discharge, but may not necessarily be substances themselves.

EPA's current 304(a) human health criteria recommendations for consumption of contaminated organisms are based on consumption of freshwater, estuarine, and near-shore fish and shellfish. They exclude consumption of open ocean species and are, therefore, applicable to State ocean waters (waters within three miles of shore). Outside this boundary, most pelagic fish (such as swordfish) tend to travel considerable distances and are not necessarily exposed to ocean discharges for a significant amount of time. Consumption rate information may be available to help evaluate the need for human health-based consumption limits for ocean discharges beyond three miles, and can be used to establish such limits where appropriate. Health-based criteria

should be addressed in offshore areas that are known to support commercial, recreational, or subsistence fisheries. These 304(a) criteria for human health are not proposed here given the potentially wide variability in discharge distance from shore, water characteristics, species present, and human exposure potential. Nevertheless, the criteria remain available as health guidance for site specific actions.

Another category of pollutants which the Director may need to address is pathogens, which are disease-causing microorganisms that include viruses, protozoa, and bacteria. EPA published recommendations for protection from human gastrointestinal illness from recreational bathing in near shore waters, as predicted by measurement of enterococci, in *Ambient Water Quality Criteria for Bacteria*–1986. The water quality criterion to protect primary contact recreation is based on a level of risk of no more than 19 acute gastrointestinal illnesses per 1,000 swimmers for marine waters. Given the likely low rate of primary contact recreation (if any) in deep ocean waters beyond three miles and the questionable applicability of the data used to generate the criterion for ocean waters other than near shore waters, the need for and the specific limits for pathogens are left to the discretion of the Director. This language would require limits on pathogens where they are likely to be discharged (e.g., from aquaculture) and could be a cause for concern.

Subparagraph (b)(3) uses the term “cause, have the reasonable potential to cause, or contributes” in reference to the narrative and numeric criteria applicable to Healthy Ocean Waters. EPA's existing regulations establish the procedures for determining whether a discharge is causing, or has reasonable potential to cause, or is contributing to an excursion above a State water quality criterion, identify those permits that must have water quality-based effluent limits

(WQBELs), and describe several principles for developing WQBELs (40 CFR 122.44(d)(1)). EPA is proposing that these procedures be followed by the permitting authority when determining whether WQBELs should be included in NPDES permits to protect and maintain the designated uses of Healthy Ocean Waters. Consequently, EPA has incorporated into the proposed rule procedures which are similar to those found in 40 CFR 122.44(d)(1)(i) - (iii). When determining whether a discharge causes, has the reasonable potential to cause, or contributes to an excursion above any ocean discharge criteria established for Healthy Ocean Waters, the permitting authority must use all relevant available data, including facility-specific effluent monitoring data where available. Additionally, the permitting authority must use procedures which account for existing controls on point and nonpoint sources of pollution; variability of the pollutant or pollutant parameter in the effluent; and the dilution of the effluent in the receiving water (40 CFR 125.123(b)(3)). If the permitting authority determines that a discharge has the reasonable potential to cause or contribute to an excursion of an applicable Healthy Ocean Waters discharge criteria, it must include a WQBEL for the individual pollutant in the permit (40 CFR 125.123(b)(3)).

EPA has provided guidance on how to apply these requirements in the "Technical Support Document for Water Quality-based Toxics Control (TSD)" (EPA/505/2-90-001, March 1991), which is available in the administrative record for this rule-making. In the TSD, EPA recommends that facility-specific effluent monitoring data be used, where available, to project receiving water concentrations, which are then compared to water quality criteria. This comparison in the TSD guidance is comprised first of calculating the pollutant concentration in the receiving water after considering dilution (40 CFR 125.123(b)(4) allows the designation of

mixing zones on a case-by-case basis), the contributions of other point and nonpoint sources, and the potential for effluent variability to justify assuming higher effluent concentrations than have actually been measured; and second, comparing this calculation to the applicable water quality criterion. The TSD guidance allows the permitting authority the flexibility to determine the appropriate approach for assessing reasonable potential. Whatever approach is selected by the authority, it must satisfy all requirements proposed in 40 CFR 125.123(b)(3).

One of four outcomes will be reached when using the TSD protocol:

-- Excursion Above the Ocean Discharge Criterion. If the permitting authority determines that pollutants or pollutant parameters in a facility's discharge are or may be discharged at a level which causes or contributes to an excursion above a narrative or numeric water quality criterion for Healthy Ocean Waters, it must establish a WQBEL in the permit for those pollutants (40 CFR 125.123(b)(3)).

-- Reasonable Potential for Excursion Above the Ocean Discharge Criterion. If the permitting authority determines that pollutants or pollutant parameters in a facility`s discharge are or may be discharged at a level which has the reasonable potential to cause or contribute to an excursion above a narrative or numeric water quality criterion for Healthy Ocean Waters, it must establish a WQBEL in the permit for that pollutant (40 CFR 125.123(b)(3)). EPA believes that reasonable potential is shown where an effluent, in conjunction with other sources of a pollutant, is projected to cause an excursion above the water quality criterion. This projection is based upon an analysis of available data that accounts for limited sample size and effluent variability. EPA's guidance in the TSD does not, however, constrain the determination of reasonable potential to a projection of an excursion above a water quality criterion based solely on effluent

variability. The guidance recognizes that reasonable potential determinations include consideration of the factors identified in 40 CFR 125.123(b)(3) and any other appropriate factors based on the professional judgment of the permitting authority. These other factors may include the existing data on toxic pollutants; type of receiving water and designated uses (e.g., high-use fishery); relative proximity of the measured effluent concentrations to the water quality criteria; existing controls on point and nonpoint sources; compliance history of the facility; and type of treatment facility.

-- No Reasonable Potential for Excursions Above the Ocean Discharge Criterion. If the permitting authority determines that the pollutants or pollutant parameters in a facility's discharge are not discharged at a level that has the reasonable potential to cause or contribute to an excursion above a narrative or numeric water quality criterion for Healthy Ocean Waters, then a WQBEL for those pollutants is not necessary. In these situations, EPA's guidance recommends that effluent monitoring for the pollutants or pollutant parameters be repeated at a frequency of at least once every five years (see TSD at p. 64). This usually occurs as part of the permit application.

-- Inadequate Information. If a permitting authority has inadequate information to determine whether a discharge contains pollutants or pollutant parameters which are or may be discharged at a level which has the reasonable potential to cause or contribute to an excursion of a narrative or numeric water quality criterion, EPA's existing guidance recommends that the permit contain appropriate monitoring requirements and a reopener clause (see TSD at p. 64). In the case of a discharge regulated under section 403, however, the lack of adequate information, including the lack of information concerning the potential of a pollutant to cause an excursion

above a criteria level, is considered to be insufficient information to make a reasonable judgment whether the discharge complies with section 403 and no permit should be issued (40 CFR 122.4(h)(2)). This effectively provides a higher level of protection for ocean waters than for other waters of the U.S. in situations where information on biological effects is limited. EPA recognizes that deep ocean ecosystems in particular are among the least well understood of all aquatic ecosystems. EPA requests comment on how EPA is proposing to implement CWA section 403(c)(2), and what the effects of this proposal may be on permitted entities.

Where the Director determines that a pollutant or pollutant parameter will cause, or has reasonable potential to cause or contribute to, a violation of the narrative criterion in subparagraph (b)(1) above, the Director must include an effluent limitation sufficient to attain that criterion.

In general, EPA interprets the CWA as allowing the use of mixing zones as long as provisions exist to protect the designated uses of the water body as a whole. Subparagraph (b)(4) of this section contains a provision that would allow mixing zones to be established on a case-by-case basis. EPA's current guidance describes a mixing zone as an allocated impact zone where certain numeric water quality criteria may be exceeded provided that the mixing zone does not impair the integrity of the water body as a whole, there is no lethality to organisms passing through the mixing zone, and there are no significant health risks, considering likely pathways of exposure (EPA *Water Quality Standards Handbook*, Second Edition, p 5-1). The guidance goes on to explain that lethality to organisms passing through is a function of the magnitude of pollutant concentration and the duration an organism is exposed to these concentrations. This is of particular concern for wastewater plumes or structures that tend to attract aquatic life, or where

organisms would not be able to avoid, pass through quickly, or flee the mixing zone. Loss of individual organisms may be less of a concern for some mixing zones in the open ocean because of the lower probability of organisms encountering the mixing zone given the size of the surrounding ocean environment. Mixing zones in Healthy Ocean Waters should be consistent with the policy set out in the *Water Quality Standards Handbook*.

EPA acknowledges that there may be limited circumstances where chemical-specific toxic water quality criteria may be exceeded for a limited time in a limited portion of the waterbody, without adversely affecting uses of the waterbody as a whole as long as a number of other protections are maintained. The mixing zone provisions in § 125.123(b)(4) include an explicit clarification that in-zone water quality must ensure that Healthy Ocean Waters are maintained and protected in the surrounding ocean environment. To protect the surrounding ocean environment, mixing zones should not cause or contribute to the impairment of a functional biological community or ocean resource in the vicinity of the discharge.

EPA's policy has emphasized a holistic approach to mixing zone regulation which considers location, size, shape, outfall design and in-zone quality. Mixing zone guidance produced by EPA since 1972 has consistently emphasized the need to protect both nonmotile benthic and sessile organisms as well as swimming and drifting organisms when developing and locating a mixing zone. For nonmotile benthic and sessile organisms, adverse impacts on such organisms may be a reason to carefully limit mixing zone size. Such impacts may also be a reason to prohibit a mixing zone if necessary and may be an important reason for carefully locating new discharges. However, in cases where there is ample area outside the mixing zone to support a balanced, indigenous population, the fact that some mortality to benthic and sessile

organisms located within the very limited area of the mixing zone may occur would not in itself preclude the designation of a mixing zone. EPA's guidance on mixing zones has been detailed in a number of Agency publications, including the Water Quality Standards Handbook, August 1994, and the Technical Support Document for Water Quality-based Toxics Control, March 1991. EPA invites comments on this proposed mixing zone provision, specifically on whether mixing zones should be prohibited or more specifically limited for all discharges to Healthy Ocean Waters, and whether an absolute cap (e.g., 100 meters) on mixing zone size should be established.

Subparagraph (b)(5) of this section provides that where water quality is better than the minimum level necessary to support the use of Healthy Ocean Waters, that water quality would be maintained and protected unless, after consultation with the public, the Director determines that some lowering of water quality is deemed to be necessary to allow important economic or social development to occur. In cases where some lowering of water quality is allowed, the Director must assure that water quality does not go below the minimum level necessary to support the use of Healthy Ocean Waters. This provision is intended to establish a systematic, public decision-making process for determining whether or not to allow limited deterioration of water quality, regardless of whether the Director believes that the underlying uses of Healthy Ocean Waters will be maintained and protected. This language is, however, not intended to preclude application of a "de minimis" exemption. The proposed language uses as a model the antidegradation provisions of 40 CFR 131.12(a)(2). Concerns have been raised that some ocean waters may be different from inland waters in that there are vast areas of undifferentiated waters where the potential for adverse impact resulting from anthropogenic activities is limited. EPA

seeks public comment on the clarity of the proposed rule language in subparagraph (b)(5) to meet the intent as described here, and on the need for an antidegradation policy for Healthy Ocean Waters.

Section 125.124 What are the ocean discharge permit requirements?

Paragraph (a) of this section describes the information that must be submitted by an applicant for an NPDES permit to discharge into any ocean waters (i.e., not just into Healthy Ocean Waters), in addition to the information that must be submitted under 40 CFR Parts 122 and 124. The information submitted under this proposed regulation is specific to the effects or expected effects of the proposed discharge on ocean waters. This information will be used by the Director to determine if the discharge will meet the requirements for an ocean discharge as proposed in § 125.124(b) (discussed below). EPA expects that when a permit is being reissued, if the applicant already provided some or all information at the time the permit was originally issued or previously reissued, the Director may determine that the provided information does not have to be resubmitted if it is still applicable to the currently proposed discharge.

Activities such as storm water runoff, offshore oil and gas exploration and production, and seafood processors are usually covered under an NPDES general permit. EPA develops the general permit for areas where EPA is the permitting authority and may request supporting information from the facilities that would likely be covered under the permit using CWA section 308 authority. In addition, applicants that seek coverage under a particular general permit must complete a Notice of Intent (NOI) and submit appropriate information as directed under the

provisions of the general permit. That information usually includes general information about their facilities, discharges, and other information deemed necessary by the Director. General permits must be sufficient to attain the appropriate ocean water quality criteria. Furthermore, where EPA proposes to establish or establishes an area as an SOS and there is an existing general permit authorizing discharges in the area, EPA may propose to modify the general permit to prohibit any additional notices of intent (to be covered by the permit) to be filed for new or significantly expanded discharges to the SOS. If a general permit covering an area established or proposed to be established as an SOS has expired, when EPA proposes the new general permit, EPA may propose not to authorize any new or significantly expanded discharges to the SOS under the general permit.

Much of the information that must be submitted by the applicant under the proposed regulation reflects (1) the factors the Director must consider under the current regulation to determine whether a discharge will cause unreasonable degradation of the marine environment (see 40 CFR 125.122(a)), and (2) the information that the permit applicant must submit under the current regulation (see 40 CFR 125.124). EPA believes that it makes more sense to combine these two current sections into one comprehensive list, and to formally acknowledge that all of this information must be submitted by the applicant.

The following bullets provide a brief description of the proposed information requirements, and the section(s) in the current regulation on which these requirements are based.

- Section 125.124(a)(1). The applicant must provide an evaluation of the expected attainment and maintenance of applicable State, Territory, Federal, or authorized Tribe water quality standards (if the proposed discharge is to waters where applicable CWA

water quality standards are in place) or an evaluation of the expected attainment and maintenance of Healthy Ocean Waters (if the proposed discharge is to any other ocean waters). This is a change from the current ocean discharge criteria regulation, although it incorporates and strengthens one of the unreasonable degradation considerations in the current regulation (see 40 CFR 125.122(a)(10)). This requirement is discussed under proposed § 125.123, above.

- Section 125.124(a)(2). The applicant must provide an analysis of the chemical, physical, and biological constituents of the proposed discharge, including the quantities, qualities, composition, and potential for bioaccumulation or persistence, and the potential impact to indigenous biota. This is a basic analysis of the proposed discharge. This requirement is based on information that must be provided by the permit applicant under the current regulation (see 40 CFR 125.124(a)) and on one of the unreasonable degradation considerations in the current regulation (see 40 CFR 125.122(a)(1)).
- Section 125.124(a)(3). The applicant must provide a description of the composition, diversity, and productivity of the biological community (in and on the water and the sediment) in and around the area of the proposed discharge, and an evaluation of the potential impacts of the discharge on the biological community. This is a basic evaluation of the area that might be affected by the proposed discharge. This requirement is based on information that must be provided by the permit applicant under the current regulation (see 40 CFR 125.124(e)) and on one of the unreasonable degradation considerations in the current regulation (see 40 CFR 125.122(a)(3)).
- Section 125.124(a)(4). The applicant must provide an evaluation of the potential

transport of pollutants in the proposed discharge by biological, chemical, or physical processes. This requirement is based on one of the unreasonable degradation considerations in the current regulation (see 40 CFR 125.122(a)(2)).

- Section 125.124(a)(5). The applicant must provide an evaluation of the potential impacts on esthetic, recreational, and economic values, including effects on beach recreation and on finfishing and shellfishing. This requirement is based on one of the unreasonable degradation considerations in the current regulation (see 40 CFR 125.122(a)(7)).
- Section 125.124(a)(6). The applicant must provide a description of any fish, shellfish, or other aquatic organisms in the area of the discharge caught or harvested for human consumption, and an evaluation of the potential impacts on the health of persons consuming these fish, shellfish, or other aquatic organisms. This requirement is based on one of the unreasonable degradation considerations in the current regulation (see 40 CFR 125.122(a)(6)). This requirement is similar to that in the previous proposed subparagraph (§ 125.124(a)(5)) in that it also deals with fish and shellfish, but it differs from that requirement because it focuses on the human health effects rather than the esthetic, recreational, and economic effects.
- Section 125.124(a)(7). The applicant must identify any enforceable policies of a State's Federally-approved Coastal Zone Management Program and describe how the proposed discharge will comply with such enforceable policies, pursuant to 15 CFR Part 930, Subpart D. This requirement is based on one of the unreasonable degradation considerations in the current regulation (see 40 CFR 125.122(a)(8)).
- Section 125.124(a)(8). The applicant must provide an assessment of practicable

alternative treatment or production processes, or modifications to treatment or production processes, that would eliminate or reduce the quantities of pollutants to be discharged. This requirement is based on information that must be provided by the permit applicant under the current regulation (see 40 CFR 125.124(d)). This is not generally required by Federal technology-based regulations, but may be a requirement of State water quality standards regulations. EPA believes that including this additional information requirement in this Federal regulation is necessary to implement CWA section 403(c)(1)(F), under which the Administrator must promulgate guidelines for determining the degradation of ocean waters, which shall include "other possible locations and methods of disposal or recycling of pollutants including land-based alternatives." EPA requests comment on its proposed implementation of CWA section 403(c)(1)(F).

- Section 125.124(a)(9). The applicant must provide an evaluation of practicable alternatives to the proposed discharge, including land-based disposal, injection, or discharge to other waters of the U.S. or to other ocean waters. The current regulations require this information (see 40 CFR 125.124(f)). This requirement is based on the statutory language of CWA section 403(c)(1)(F), which directs the Administrator to include consideration of "other possible locations and methods of disposal or recycling of pollutants including land-based alternatives." A similar analysis is required under the CWA section 404(b)(1) Guidelines, which are also based on the criteria in section 403(c) of the Act. EPA envisions that this analysis will look at what, if any, alternatives are available, in particular prior to an activity or discharge locating in a particular area of ocean waters. EPA believes that it would further the objectives of ocean protection to

ensure that less damaging alternative locations or methods of disposal are considered, where practicable.

- Section 125.124(a)(10). The applicant must propose a monitoring program, to be conducted by the applicant, that would be sufficient to assess compliance with any permit requirements. EPA believes that this is an important requirement to ensure attainment and maintenance of applicable standards and the other requirements of the proposed regulations. Further, most ocean dischargers conduct monitoring under other CWA section 402 requirements.
- Section 125.124(a)(11). The applicant must provide any other pertinent information that the Director may require. This requirement is based on one of the unreasonable degradation considerations in the current regulation (see 40 CFR 125.122(a)(9)).

For a new discharge, an evaluation of the effects of the discharge on receiving waters may be difficult to obtain because those waters have never been exposed to the proposed discharge. EPA believes that an evaluation may still be extrapolated from existing sources such as peer-reviewed scientific literature or from studies on the biological effects of the proposed discharge on other aquatic ecosystems. Together with information on the basic analysis of the proposed discharge and discharge site conditions required above, EPA believes that a reasonable assessment of the effects of a discharge may be attained.

Subparagraph (b) of this section proposes the conditions under which the Director may grant an NPDES permit for a discharge to ocean waters. This would apply to the NPDES permit authority whether State, Territorial, Tribal, or Federal. All three of these conditions must be met

in order for the Director to issue a permit. First, the discharge must comply with the ocean discharge standards proposed in § 125.123. If the proposed discharge is to waters where applicable CWA water quality standards are in place, the discharge must meet applicable State, Territory, Federal, or authorized Tribe water quality standards. If the proposed discharge is to any other ocean waters, it must meet the requirements of Healthy Ocean Waters as proposed in § 125.123(b).

Second, the discharge must not be prohibited by the following section in this proposed regulation (§ 125.124(c)). Basically, a discharge would be prohibited if (1) the applicant has not provided sufficient information to make a permit decision under these proposed regulations, or (2) the application is for a new or significantly expanded discharge to a Special Ocean Site, or (3) there is an environmentally preferable alternative to the proposed ocean discharge which would not impose an unreasonable economic burden on the applicant or pose an unacceptable risk to human health or safety.

Third, the Director must determine that the discharge does not cause significant adverse changes to the biological community, that it does not cause unacceptable risk to human health or wildlife, that it does not adversely affect recreation, and that it does not adversely affect esthetic, scientific, or economic values to an unreasonable extent. This language is similar to the definition of "unreasonable degradation of the marine environment" in the current regulation (see 40 CFR 125.121(e)). EPA is proposing to delete the term "unreasonable degradation" but retain the more specific, environmentally based elements now used in the evaluation of ocean discharge permit applications. Note that any proposed discharge to ocean waters must comply with these provisions in addition to meeting applicable CWA water quality standards or Heathy Ocean

Waters requirements.

A few changes to the language in this subparagraph have been proposed in order to clarify EPA's interpretation of these requirements and to clarify the correspondence between these determinations and the information that must be submitted by the permit applicant under proposed § 125.124(a). First, in the proposed regulation, the discharge may not cause significant adverse changes in the "composition, diversity, or productivity" of the biological community in or around the area of the discharge (proposed § 125.124(b)(3)(i)). This is a change from "ecosystem diversity, productivity, and stability" in the current regulation (see 40 CFR 125.121(e)(1)). The addition of "composition" was made to clarify EPA's interpretation that degradation of the marine environment includes changes in species composition; the deletion of "stability" was made to acknowledge that changes in stability are difficult to measure or regulate. Second, protection of wildlife was added to the section on protection of human health (proposed § 125.124(b)(3)(ii)). This addition is intended to clarify that a balanced indigenous population of wildlife is intended to be protected by these regulations (not necessarily every member of a species). Previously implicit, the proposal would make this explicit.

Subparagraph (c) of this section proposes the conditions under which the Director shall not grant an NPDES permit for a discharge to ocean waters. First, the permit shall not be granted if the applicant does not provide information that is sufficient to make any of the determinations necessary to grant a permit under this proposed regulation. This is a change from the current regulation. Under the current 40 CFR 125.123(c), the Director may issue a permit if there is insufficient information to determine that there will be no unreasonable degradation of the marine environment provided that (1) the discharge will not cause irreparable harm to the marine

environment, (2) there are no reasonable alternatives, and (3) the discharge meets other criteria and is monitored to assess its impact. There is no explicit provision in CWA section 403 that allows for the issuance of an NPDES ocean discharge permit if there is insufficient information to make a reasonable judgment on any of the guidelines established under this section. However, the CWA section 403 implementing regulations promulgated in 1980 (40 CFR 125.120) incorporated such a provision to address the significant data gaps associated with conducting ecological risk assessments for point source ocean discharges. The "irreparable harm" provision added to the regulations to address insufficient information was originally designed to be used for one permit cycle (five years). Today those data gaps are not as significant and EPA believes it is reasonable to expect an NPDES ocean discharge permit to be issued or denied using available data to make such a determination. Therefore, EPA is proposing to delete this provision.

Second, the permit may not be granted if it is for a new or significantly expanded discharge and the proposed discharge location is in a Special Ocean Site. Special Ocean Sites are discussed further under proposed §§ 125.121 and 125.124. Under the proposed regulation, permits will not be granted for new or significantly expanded discharges into Special Ocean Sites unless the President waives this prohibition in the paramount interest of the United States, (e.g., in the interest of national security or essential energy development; see proposed § 125.124(d)(2) for a discussion of this waiver). New discharges are discharges which are not authorized by an existing NPDES permit at the time the Special Ocean Site is established (see proposed § 125.125 for a discussion of the establishment of Special Ocean Sites). Existing discharges into Special Ocean Sites (i.e., those that are authorized by an existing NPDES permit at the time the Special Ocean Site is established) will not be prohibited unless they are significantly expanded. As

discussed under proposed § 125.121, EPA is proposing to interpret "significantly expanded discharge" to mean a twenty percent or greater increase in loadings above the discharger's current permit limit. Existing discharges and any new or significantly expanded discharges which the President allows in Special Ocean Sites must meet all other applicable provisions of this proposed regulation (see proposed § 125.125(d)).

EPA is also proposing to include within the SOS a band of water at least 1,000 meters wide extending all the way around the high value area. The reason for this is that the boundaries of some high value areas that may be established as SOSs, such as existing marine parks or marine protected areas, may not be sufficient to protect the area from the effects of NPDES discharges. Therefore, in order to avoid having new discharges at the edges of these areas, EPA is proposing to include within the SOS a band of water of 1,000 meters (or larger if the Administrator determines through rulemaking that this is necessary for a particular site) around the high value area.

The third provision of this subparagraph proposes that a permit may not be granted if there is an environmentally preferable alternative to the proposed ocean discharge that would not impose unreasonable economic burden on the applicant, or pose unacceptable risk to human health or safety. An example of unreasonable economic burden is a situation where costs are disproportionate to the environmental benefits of the alternative. EPA requests comment on how unreasonable economic burden is determined. This provision implements a reasonable interpretation of CWA section 403(c)(1)(F), which provides that "other possible locations and methods of disposal or recycling of pollutants including land-based alternatives" be considered. As clarified under subparagraph (f) of this section, it is EPA's intention that this provision be

applied so that the extent of the evaluation regarding alternatives is commensurate with the severity of the environmental impact and the nature, scope, and cost of the proposed activity. Although this requirement must be met in all cases, the evaluation procedure will vary to reflect the seriousness of the potential for adverse environmental impacts and the character of the discharge. For example, it should not be necessary to conduct an offsite alternatives analysis in cases where the discharge would result in only negligible or trivial impacts. Similarly, existing information should be relied on as much as possible, to the extent it is current and appropriate. This reasonable, common sense approach to evaluating alternatives is fully consistent with the statute, and will achieve sound environmental protection as well as efficient decision making.

Subparagraph (d)(1) retains the exemption for variances pursuant to CWA sections 301(g), 301(h), and 316(a) found in the current regulations (40 CFR 125.122(b)). Any discharges in compliance with variances pursuant to these provisions are deemed to be in compliance with the requirements of this Subpart for any specific pollutants or conditions specified in the variance. EPA is retaining this provision in the proposed regulation because it believes that the requirements for discharges under CWA sections 301(g), 301(h), and 316(a) are sufficient to protect and maintain the designated uses of ocean waters. Note that any pollutants or pollutant parameters in these discharges that are not specified in such a variance must meet the applicable provisions of this proposed regulation.

Subparagraph (d)(2) provides that the President may waive the prohibition on new and significantly expanded discharges to waters of a Special Ocean Site (found in proposed § 125.124(c)(2)) if the discharge is required in the paramount interest of the United States (e.g., in the interest of national security or essential energy development). CWA section 313, which

relates to the Federal facility compliance, provides for such a waiver for Federal facilities (section 313(a)). Any new or significantly expanded discharges allowed in a Special Ocean Site under this provision must meet all other applicable provisions of this proposed regulation (see proposed § 125.125(d)). See proposed § 125.121 for a discussion of the definition of "significantly expanded discharge." EPA requests comment on whether the Administrator, rather than the President, should be given the authority to waive the prohibition on new and significantly expanded discharges to an SOS for permit applicants other than Federal facilities.

Subparagraph (e) of this section implements CWA section 403(b), which states that the requirements regarding notification to the Administrator found in CWA section 402(d) may not be waived in the case of permits for discharges into State ocean waters (waters within three miles of shore). Subparagraph (e) of the proposed regulation requires that States, Territories, and NPDES-authorized Tribes transmit to the Administrator a copy of every permit application to discharge to waters within their jurisdiction, and notice of every such permit proposed to be issued. Also implementing this provision of the CWA is 40 CFR 123.24(d), which states that in Memoranda of Agreement between States and Regional Administrators, no waiver of review may be granted for discharges into State ocean waters. Note that, where the proposed regulations provide discretion to the Director in making a permit related decision, this discretion is also available to the Administrator in the case where the Administrator reviews and revises a permit issued by a State, Territory, or authorized Tribe.

EPA is proposing that the permit authority obtain the necessary information to conduct an evaluation of alternatives before making an ocean permitting decision. However, these regulations cover evaluation for a variety of activities, existing and new, some of which would

not be likely to have large or complex impacts on the marine environment. It generally is not intended or expected that extensive evaluation or analysis will be needed to make findings of compliance for activities that are both minor in nature and have little, if any, potential for adverse impact to the marine environment. This reasonable, common sense approach is fully consistent with the statute, and will achieve sound environmental protection as well as efficient decision making.

Section 125.125 Where are Special Ocean Sites and what is the process for identifying, establishing, disestablishing and managing Special Ocean Sites?

1. Special Ocean Sites proposed to be established (§ 125.125(a)).

List of Special Ocean Sites

The Agency is proposing to designate four Special Ocean Sites (SOS) in Federal ocean waters, each including a 1,000 meter-wide band of water around the high value area to be protected. EPA believes that these sites meet the proposed definition of SOS found at § 125.121(f), and has not received or identified any information that would require the bands of water to be wider than 1,000 meters in order to adequately protect the areas. Short descriptions of the SOSs proposed for establishment in today's proposed regulation follow. The coordinates for each proposed SOS are provided in § 125.125(a).

EPA received numerous suggestions for SOS designations; those located in Federal waters which EPA believes, based on currently available information, meet the proposed

definition of SOS found at § 125.121(f), are included in this proposed designation action. Detailed reports for each proposed SOS have been added to the rulemaking record. These reports contain information and data that describe the SOS in terms of its biological and physical characteristics, the outstanding characteristics of the site that make it warrant SOS status, and other pertinent information, such as whether NPDES permits have been, or are planned to be issued. Other suggested sites may be proposed for establishment as SOSs in the future as additional information becomes available.

No suggestions for the establishment of an SOS in State ocean waters were provided or concurred in by any State Governor. Therefore, no SOSs in State ocean waters are listed at this time. However, EPA is working actively to solicit sites from States, and in particular is working with Florida, Hawaii, and California regarding sites such as the Dry Tortugas National Park, the Northwestern Hawaiian Islands, and the Channel Islands National Marine Sanctuary.

Flower Garden Banks

The Flower Garden Banks National Marine Sanctuary is located 110 miles off the coast of Louisiana and Texas, and contains the northernmost coral reefs in the United States. The sanctuary serves as habitat for shallow water Caribbean fish and invertebrates, as well as for various endangered species. Ecologically, the Flower Garden Banks contains a high level of biodiversity and supports a unique ecosystem. Approximately 170 million years ago, thick layers of salt became covered with sediment until the internal pressures mounted and pushed isolated pockets of the salt layers through the sediments causing the sea floor to bulge in distinct domes. Corals are thought to have developed on top of these salt domes approximately 10-15,000 years

ago giving rise to two separate banks of coral reef communities. The only known oceanic brine seep located at continental shelf depths occurs on the east bank, and the seep is covered by a mat of sulfide oxidizing bacteria.

Many species of fish, invertebrates, and corals are present on the Flower Garden Banks, and the golden phase of the smooth trunkfish is endemic to the sanctuary. Various species of endangered and threatened sea turtles, as well as manta rays and whale sharks frequent these waters. Annual spawning and behavioral events occur within the Flower Garden Banks National Marine Sanctuary. Mass coral spawning occurs every year seven to ten nights following the full moon in August or September. Every winter, scalloped hammerhead sharks congregate in large numbers in the waters of the sanctuary. These events provide unique opportunities for marine science. As a National Marine Sanctuary, the Flower Garden Banks and its aesthetics bring tourists to the region for many recreational activities. The local economies continue to benefit from tourism, and resources in this area are also key to commercial fisheries. Current NPDES oil and gas general permits prohibit discharging within the "no-activity" zone, which is inside the sanctuary boundary.

The Sanctuary has also been designated as a Habitat Area of Particular Concern (HAPC) for coral and coral reefs under the 1996 Amendments to the Magnuson-Stevens Fishery Conservation and Management Act. Requirements were added to this Act in order to describe and identify essential fish habitat (EFH). Regulations promulgated by the National Marine Fisheries Service (NMFS) (50 CFR Part 600, Subpart J, 62 FR 66531, 66551) are in place to guide Fishery Management Councils in the implementation of EFH provisions. EFH provisions, which include the designation of HAPCS, focus conservation priorities on specific habitat areas

that play an important role in the life cycles of Federally managed fish species. EPA believes that the additional designation of SOS will enhance the protection of these unique reefs.

EPA believes that given the biodiversity, presence of threatened and endangered species, unique habitats, and recreational interests, as well as the presence of existing and potentially expanding point source discharges, the Flower Garden Banks National Marine Sanctuary should receive SOS status. The coordinates proposed in today's rule include a 1,000-meter band of water around the existing sanctuary.

Gorda Ridge-Blanco Fracture Zone

The Gorda Ridge-Blanco Fracture Zone, a sea floor spreading center and fracture zone, is approximately 21,000 mi^2 in size and is located off the coast of Oregon, within the United States Exclusive Economic Zone. The area is characterized by rugged topography, volcanic activity, and crustal movement along the Gorda Ridge Valley and the transform-fault Blanco Fracture Zone. Hydrothermal vents present at the site support unique biological and microbial communities, which include various species of worms, snails, clams and crabs that can only be found in these hydrothermal ecosystems. Hydrothermal vent ecosystems are unique in that they are generally chemosynthetically-based systems. Most ecosystems are photosynthesis-based, which means primary production is driven by sunlight. Hydrothermal vent communities are so deep that sunlight does not penetrate, so the algae and plants that form the base of many marine food-webs are not present. Instead, chemosynthesis from the biochemical transformation of volcanic minerals by microorganisms forms the basis of these food webs.

Hydrothermal vent communities contain many organisms endemic to these areas and are

new to science, and EPA believes that the protection of these unique areas is of great importance, and that SOS status is appropriate.

Escanaba Trough of the Gorda Ridge

The Escanaba Trough is located off the coast of northern California and Oregon, on the southern part of the Gorda Ridge, extending 150 kilometers north from the Mendocino fracture. The trough is 3,300 meters deep, covered by as much as 1,000 meters of sediment. There are several active volcanic centers within the trough, which, when combined with a thick sediment blanket and seawater, results in conditions that are favorable for the formation of large polymetallic sulfide deposits that may be rich in precious and base metals. Protection of this area is necessary in that it provides a new perspective on the formation of mineral and metal deposits, and is important to basic geologic research. Protection of this area is necessary so that researchers can understand how and where these deposits form in order to successfully explore for land-based analogues.

Not only is the Escanaba Trough a unique geological entity, but the reaction of the seawater, volcanic rock and sediment produces a heated acidic fluid discharge that sustains unique hydrothermal vent communities. These vent communities include species of worms, snails, clams, crabs, and microbial communities that are unique to these ecosystems. EPA believes that the unique geological and biological properties of this area warrant SOS status.

Right Whale Critical Habitat Areas

The northern right whale is listed as an endangered species throughout its range, and

critical habitats for this species have been designated off Cape Cod and the waters of the southeastern U.S. EPA is proposing that those critical habitat areas which are found in Federal waters receive SOS status. The coordinates proposed in today's rule include a 1,000-meter band of water around the existing critical habitats.

The Great South Channel is located 45 miles southeast of Cape Cod, Massachusetts, and is a primary feeding ground used by endangered northern right whales from spring until early summer. In contrast to northern populations, right whale stocks in the southern hemisphere are increasing 2 to 3 times the rate seen in the northern populations. Coastal pollution has been suggested as a factor contributing to the poor recovery of the right whales, and further protection is needed to insure that the population successfully increases to levels found in the southern latitudes. EPA is proposing that this entire critical habitat receive SOS status.

The waters off the coast of Georgia and northeastern Florida, an area described as the Southeastern United States (SEUS), are the only known breeding grounds for northern right whales. Whales are present in this area from late November to early March; breeding and calving season peaks in January. Females and their newborn calves appear to stay in the region longer, and will stay closer to shore than other right whales in the area. EPA is proposing that the portion of the SEUS critical habitat which exists in Federal waters receive SOS status.

2. Identification, Establishment, and Disestablishment of Special Ocean Sites (§ 125.125(b)).

How are Special Ocean Sites Chosen?

Today's rule proposes that Special Ocean Sites are areas of the ocean established for special protection under proposed § 125.125(a) because they "have outstanding ecological, environmental, recreational, scientific, or esthetic value."

Under today's proposed rule, any ocean waters that have been designated under the Endangered Species Act as providing critical habitat for threatened or endangered species, high value coral reef ecosystems, and hydrothermal vent ecosystems would meet the "outstanding" value criterion described above. EPA would consider establishing such areas as SOSs during the continuing assessment of ocean conditions or as they are proposed as SOSs through the petition process established in this regulation.

EPA believes that areas of the ocean that are designated critical habitat for threatened and endangered species should have SOS status. Under the Endangered Species Act, these habitats include areas "on which are found those physical or biological features essential to the conservation of the species." An example of these habitats in ocean waters is critical habitat for the endangered right whale that has been designated off the coast of Georgia and northeastern Florida.

High value coral reef ecosystems also meet the definition of an SOS. In determining whether a coral reef ecosystem is of "high value" EPA will consider whether the ecosystem supports high levels of species diversity, or provides habitat for unique or endemic organisms.

Hydrothermal vent ecosystems support biological communities that thrive in the high-temperature/high-pressure environments that are characteristic of these unique communities. Many of the organisms in these communities are not found anywhere else, and EPA believes that the protection of these areas is crucial.

In addition, EPA expects that some additional ocean areas may meet the "outstanding" value criterion provided in the definition of SOSs. EPA will consider whether any other ocean sites meet this criterion. For example, EPA believes that some sites that are unique or irreplaceable spawning/breeding/nursery areas for aquatic organisms, seasonal migratory pathways, oceanic upwelling areas, areas that support slow-growing species such as some coral reefs, or other areas critical to the life histories of marine organisms may meet the SOS criterion based on evaluation of pertinent information. EPA is proposing to consider establishing such "outstanding" value ocean areas as SOSs through its continuing assessment of ocean conditions, or the proposal of such areas through the petition process established in this regulation.

EPA believes that areas may warrant SOS status if discharges normally permitted under this regulation are shown to have the potential to cause adverse effects resulting from direct or indirect exposure to pollutants, thus impairing biological communities inhabiting those areas. EPA believes that even if discharges meet standards for ocean waters some valuable and sensitive ecosystems may not be able to tolerate such discharges. If these areas are already designated for protection under other authorities, EPA believes that SOS status may also be appropriate as an additional level of protection if needed. For example, an area designated as a Marine Protected Area (MPA) may still allow permitted discharges under the Clean Water Act. However, additional discharge permits, or expansion of existing discharges, may result in adverse effects from the permitted discharges. That MPA may then warrant SOS designation, which would prohibit any new permits for discharge at the site, as well as prohibit the significant expansion of existing discharges. EPA believes that such a precautionary approach is needed to protect fragile or sensitive ecosystems.

EPA also believes that recreational areas can be sensitive to point source discharges. Clean, safe recreational areas are important to the well-being of millions of U.S. citizens who annually choose coastal and ocean areas for their homes and vacations. EPA believes that, if there is compelling evidence to suggest that point source discharges will threaten public health and safety, then SOS status should be considered for these areas. EPA requests comment on the inclusion of recreational resources as potential SOSs.

EPA is also considering the inclusion of areas that contain cultural resources as additional categories of SOS, for SOSs within 24 miles of shore. EPA is considering restricting cultural resource SOSs to waters within 24 miles of shore in order to be consistent with international law regarding underwater cultural heritage. Many waters contain cultural resources such as shipwrecks and submerged prehistoric sites. The integrity of these sites may be threatened by contamination from point source discharges that may interfere with or affect to locate, document, and assess such archaeological resources. These sites may also have unique or irreplaceable value for recreation. Other sites may be important due to Tribal cultural practices such as fishing or ceremonial activities. EPA requests comment on the inclusion of cultural values to the definition of SOSs, and on the restriction of cultural resource SOSs to waters within 24 miles of shore.

Finally, EPA believes that establishment of an SOS is not appropriate for all ocean waters, nor should SOS status necessarily be applied to all ocean waters that have been designated under other authorities, such as Marine Protected Areas, National Marine Sanctuaries, parks, refuges, historic monuments, national seashores, Essential Fish Habitat, including HPACs, or other such designations.

It is important to note that no areas would be treated as SOSs under this proposal until EPA has designated the SOS through rulemaking. The discussions of types of SOSs are intended to provide greater predictability and clarity to the public, including potentially regulated dischargers.

Identification and Establishment of Special Ocean Sites (§ 125.125(b))

As part of the process for the establishment and disestablishment of SOSs, EPA is proposing to conduct periodic reviews of existing and potential SOSs. The review process would evaluate whether new SOSs should be established, evaluate environmental status and trends data at existing SOSs, and evaluate petitions submitted for the establishment or disestablishment of SOSs. EPA is proposing to conduct these evaluations on a continuing basis and to sign a public notice for publication in the Federal Register within two years after the effective date of the final regulation, and every five years thereafter. These evaluations will enable EPA to make informed decisions as to whether to establish SOSs, or disestablish existing SOSs. EPA would evaluate petitions for establishment or disestablishment of SOSs expeditiously and not necessarily wait until the end of a five-year cycle to respond to petitions. Thus, EPA may also establish or disestablish SOSs by regulation at any time; the five-year review cycle in today's proposal is intended to provide a temporal framework for continuing the SOS establishment/disestablishment process. EPA requests comments on the time frame proposed today.

EPA is also proposing to not establish SOSs within State, Territorial, or Tribal waters unless there is written concurrence from the Governor of that State or Territory or the Tribal

leader. EPA believes that the decision to establish SOSs within State, Territorial, or Tribal waters should not be a unilateral Federal decision. EPA is proposing that any decision as significant as establishing an SOS in such waters should have full agreement from that State, Territory, or Tribe. Petitions for SOS designation may be submitted by States, Territories, Tribes, local governments, or private citizens.

3. Petition for the Establishment or Disestablishment of Special Ocean Sites (§ 125.125(c)).

EPA is proposing that petitions for establishment of an SOS supply a description of the proposed SOS, and include information listed in § 125.125(c).

What is required to be submitted in order to petition for the establishment of an SOS (§ 125.125(c)(2))?

EPA is proposing that a petition for establishment of an SOS include a detailed description of the area. At a minimum, the description should include a list of items that can be found at proposed § 125.125(c)(2). This list includes:

- an appropriate map of the site, such as a NOAA or USGS map, with appropriate coordinates of the site's boundaries;
- whether the site is in Federal or State waters; whether the site has been designated for protection under other authorities;
- a description of the biological and physical characteristics that warrant SOS status;
- any information on the effects of prospective discharges, including whether permits for

discharge under this subpart have been issued; and

- any other information that the EPA requires to make an SOS determination.

For each of the SOSs proposed in today's regulation, EPA has collected all of the above mentioned information in the rulemaking record. EPA requests comment on the completeness and efficacy of the list of required information.

How may Special Ocean Sites be disestablished? (§ 125.125(c)(3))

EPA is proposing a mechanism for the removal of an area from SOS status. EPA will determine if the petitioner has demonstrated that the SOS no longer meets the definition of Special Ocean Sites found at proposed § 125.121(f). EPA assumes, however, that once an SOS is established, reversing the judgment for the need for protection will require new and compelling information. EPA requests comment on this position and the requirements for granting disestablishment of an SOS.

4. Management of Special Ocean Sites (§ 125.125(d)).

How will Special Ocean Sites be managed?

New discharges will not be permitted in Special Ocean Sites. In addition, no existing permit for a discharge to an SOS will be allowed if the permit would significantly increase pollutant loadings (20% or greater) above current permit levels. A discussion of EPA's interpretation of what is a significantly expanded discharge can be found in the discussion of

proposed § 125.124. The President may waive this prohibition on new or significantly expanded discharges based on a determination that a waiver is in the paramount interest of the United States.

Where EPA proposes to establish or establishes an area as an SOS and there is an existing general permit authorizing discharges in the area, EPA may propose to modify the general permit to prohibit any additional notices of intent (to be covered by the permit) to be filed for new or significantly expanded discharges to the SOS. If a general permit covering an area established or proposed to be established as an SOS has expired, when EPA proposes the new general permit, EPA may propose not to authorize any new or significantly expanded discharges to the SOS under the general permit.

EPA intends to carefully consider the impacts of other activities it regulates on ocean waters and Special Ocean Sites. For example, although ocean dumping is regulated under the Marine Protection, Research, and Sanctuaries Act, EPA would be unlikely to designate ocean dump sites within SOSs or approve dumping permits in those areas. Also, EPA will work with States to designate those SOSs under their jurisdiction (within three miles of shore) as no-discharge zones (NDZ) under section 312 of the Clean Water Act. This designation as a NDZ will protect SOSs from the potential impacts associated with sewage discharges from vessels.

How will EPA ensure that high value areas are protected from pollutants originating outside the SOS?

EPA is proposing that a band of water at least 1,000 meters wide be included as part of an

SOS as necessary to protect a high value area from pollutants or pollutant parameters originating outside the SOS. After the effective date of the final regulation, EPA is proposing that no permits will be issued for new or significantly expanded discharges into an SOS (§ 125.124(c)(2)). EPA is proposing 1,000 meters as a minimum width for this band of water around the high value area. This distance has been implemented as a permit requirement for oil and gas general permits. EPA requests comment on this distance, and requests data on alternative distances.

IX. What Alternatives Were Considered Regarding Major Issues in the Proposed Rule?

A. Should Special Ocean Sites Affect Only New Permits, or Both New and Existing Permits?

The proposal regarding Special Ocean Sites would affect only new or significantly expanded discharges. EPA did not consider the option of excluding new permits from these restrictions, since future activities would generally be able to plan around designated Special Ocean Sites, and such discharges could potentially undermine the values being protected. EPA requests comment on this conclusion.

EPA did consider applying the same restrictions in Special Ocean Sites to both new and existing discharges. However, EPA concluded that such restriction could impose unreasonable hardships on existing dischargers. Furthermore, the existing discharges are not precluding the values that the designation is intended to protect. Significant expansion of such discharges would be more like a new discharge than a continuation of the current discharge, and therefore would be covered by the same restrictions regarding Special Ocean Sites as would new discharge

applications.

B. What Water Quality Criteria Should Be Required to Be Met in Order to Achieve Healthy Ocean Waters?

EPA considered whether all CWA section 304(a) recommended Federal water quality criteria should be applied, or only a subset. In conducting this analysis, EPA determined that a number of the CWA section 304(a) water quality criteria were developed based on relatively shallow water conditions. Others are applicable primarily to fresh water, or to recreational contact of a sort that does not generally occur in more distant ocean waters. EPA believes that it would not be technically appropriate to automatically apply such criteria to all ocean waters. Therefore, this proposal only includes those CWA section 304(a) water quality criteria EPA has determined to be generally applicable to all ocean waters. This does not preclude the application of other CWA section 304(a) water quality criteria recommendations to ocean waters on a case-by-case basis.

C. Should There Be Different Categories of Special Ocean Sites, with Different Levels of Protection?

Additional rankings of protected areas in addition to SOSs are another regulatory scenario which is not in today's proposed regulatory text, but is included in this proposal as an alternative to the proposed Healthy Ocean Waters - Special Ocean Site paradigm. EPA is considering adding the additional concepts of seasonal SOSs and ecological preserves.

EPA is presenting the ecological preserve concept as a rarely used, but potentially critical

designation for certain areas. For example, areas that support threatened or endangered species, or unique ecosystems in which the environmental effects of any discharge are unknown may fall into the ecological preserve category. In these areas, no new permits would be issued, and existing permits would be phased out, effectively making these areas free of any point source discharge. EPA envisions this highest level of protection to be difficult to achieve. The seasonal SOS concept could be applied to areas that are sensitive to point source discharges for certain parts of the year, such as those periods that migratory or breeding species would be sensitive to a discharge. EPA believes that certain point source discharges along oceanic migratory routes or breeding areas for certain fish or marine mammals may have adverse effects on these behaviors, so these areas may be candidates for seasonal SOS status. EPA requests comment on these SOS concepts.

X. Costs of the Proposed Revisions

The analyses of incremental costs associated with today's proposal are contained in "Economic Analysis of the Clean Water Act Section 403 Implementing Regulation Revision." Please refer to the report for a comprehensive description of the methodology and detailed explanation of the estimated costs. The following is a summary of that report.

EPA evaluated the incremental costs associated with the revisions to 40 CFR Part 125, Subpart M, as well as related changes to 40 CFR Parts 122 and 123, by examining the potential impacts of the revisions on existing permitted dischargers to ocean waters and on any expected and/or anticipated new applicants for permits to discharge into ocean waters, and by evaluating associated implementation costs to Federal, State, Territorial, and Tribal governments. Incremental cost is the cost to industry, States, Territories, Tribes, and EPA resulting solely from

the proposed revisions. Three types of potential costs associated with the proposed changes to the CWA section 403 regulations were considered. First, EPA considered costs related to any technological or operational changes, if any, that would be required for a discharger to come into compliance with the designation of Healthy Ocean Waters, the establishment of ocean standards, and the revision of ocean discharge permit requirements. Second, EPA considered lost opportunity costs associated with the denial of permits for new or significantly expanded discharges into proposed Special Ocean Sites, and into areas identified as meeting the definition of SOS (i.e., high value coral reefs, hydrothermal vents, and Endangered Species Act-designated critical habitat). Finally, EPA considered the administrative, information collection and other implementation costs to the regulated community, States, Territories, Tribes, and EPA associated with the proposed revisions.

Of the three categories of potential costs, EPA has been able to quantitatively evaluate only the administrative, information collection, and program implementation costs associated with the designation of HOWs and the establishment of SOSs. While technological or operational modifications by individuals within the regulated community may be necessary, and the costs of such modifications could be significant, EPA lacks sufficient information to assess these costs, particularly for new permits. EPA has examined existing permits and pending permit applications and believes, based on its assessment, that these costs would in most cases not be significant for existing dischargers. Likewise, EPA has not received or identified any information regarding applications for new or significantly expanded discharges into proposed or potential SOSs (i.e., high value coral reefs, hydrothermal vents, and Endangered Species Act-designated critical habitat), and therefore is not able to assess any associated opportunity costs quantitatively, but recognizes that such costs could be significant, particularly as future SOSs are

established. EPA has estimated the annual incremental administrative costs associated with the proposed revisions (Table 1). Because ocean discharge permits are issued for a 5 year period, it is assumed here that one fifth of the total number of discharge permits are renewed each year, and that there is one new applicant for an ocean discharge permit per year.

Table 1. Incremental Annual Costs To Affected Entities By Activity Type

Costs To	Costs For	Annual Incremental Cost
Industry Applicants	54 Permit Application Activities	$1,307,502
	SOS Petition Activities	N/A
State Agencies	41 Permit Issuance Activities	$42,517
	5 SOS Petition Activities	$61,468
US EPA	13 Permit Issuance Activities	$12,038
	10 SOS Petition Activities	$123,190
Nongovernmental Organizations	Permit Application Activities	N/A
	5 SOS Petition Activities	$47, 159
Total		**$1,593,874**

Because of this five year permit cycle, the entire incremental cost of the proposed revisions can best be portrayed as an aggregate of the annual costs over a five year period, as shown in Table 2.

Table 2. Total Estimated Incremental 5 Year Program Costs of Proposed Revisions

Costs to	5 Year Total Costs
265 Industry Applicants	$6,537,510
State Agencies	$519,925
US EPA	$676,140
Nongovernmental Organizations	$235,795

Costs to	5 Year Total Costs
Total	**$7,969,370**

The benefits associated with the proposed revisions are largely qualitative, and are summarized in Table 3. Note that these benefits will not result from the administrative costs that are estimated here alone. Rather, environmental benefits will result when permitted (or potentially permitted) entities change their behavior as a result of the rule (e.g., by locating in less environmentally sensitive areas, adopting less polluting technology, etc.). These actions will generally involve additional costs which may be substantial.

Table 3. Qualitative Benefits Resulting From Proposed Revisions

Type of Benefit	Environmental Results
Existence Benefits	Preserve pristine areas and prevent irreversible damage; conserve natural resources for future generations
Ecological and Human Health Benefits	Reduce pollutant loadings to ocean waters and the food web; reduce bioaccumulation of toxic contaminants
Diversity Value	Promote ecological stability; protect endangered species and prevent species loss; protect critical habitats; preserve unique ecosystems
Use Benefits	Preserve and improve recreational uses like diving, fishing, and boating; preserve and enhance commercial fisheries; improve tourism opportunities such as whale watching; preserve research and scientific investigation opportunities; preserve opportunities for pharmaceutical development based on reef species

XI. Solicitation of Comments and Data

A. How long do I have to submit comments?

Submit all comments on or before [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER.]

B. How do I submit written comments?

Please submit your written information in an unbound format, no larger than 81/2 X 11 inches, suitable for copying. To ensure that EPA can read, understand, and therefore properly respond to comments, the Agency requests that you cite, where possible, the paragraph(s) or sections in the preamble, rule, or supporting documents to which each comment refers. You should use a separate paragraph for each issue you discuss. Please send an original and two copies of your comments and enclosures, including references. No faxes will be accepted.

1. Mailing written comments: Public comments regarding this proposed rule should be mailed to: Ocean Discharges Proposed Rule Comment Clerk, W-00-18, Water Docket, Mail Code 4101, EPA, Ariel Rios Building, 1200 Pennsylvania Avenue, NW., Washington, DC 20460.

2. Hand-delivering written comments: Hand-delivered comments (delivered in person or overnight mail) should go to the Ocean Discharge Proposed Rule Comment Clerk, W-00-18, Water Docket, Room 57 East Basement, Waterside Mall, 401 M Street, SW., Washington, DC 20460.

C. How do I submit comments electronically?

You also may submit comments electronically to ow-docket@epa.gov. When submitting comments electronically, identify Ocean Discharge Proposed Rule (W-00-18) in the subject heading. Electronic comments must be submitted as an ASCII, WP5.1, WP6.1, or WP8 file, avoiding the use of special characters and forms of encryption. Please submit any references cited in your comments. EPA will not immediately reply to commenters electronically other than

to seek clarification of electronic comments that may be garbled in transmission or during conversion to paper form. No faxes will be accepted.

The official record for this action will be kept in paper form. Accordingly, EPA will transfer all comments received electronically into paper form and place them in the official record, which will also include all comments submitted directly in writing. The official record is the paper record maintained at the address in ADDRESSES at the beginning of this document.

All information provided will become part of the public record. To avoid duplication of documents in the public record, please do not send the same information by paper copy and email.

D. Responses to comments: Availability of EPA responses to comments, whether the comments are written or electronic, will be published in a notice in the Federal Register or in a response to comments document placed in the official record for this proposed rulemaking.

E. Specific Solicitation of Comment and Data

As noted in the above sections, EPA solicits comments and data on many individual topics throughout this preamble. The Agency reiterates its interest in receiving comments and data on the issues addressed by those requests. In addition, EPA particularly requests comments and data on the following issues:

- The number and types of facilities potentially subject to today's proposed rule (Preamble Section V(A) and Section VI).
- The environmental impacts caused by ocean discharges (Preamble Section VII).
- The scope and applicability of the proposed rule, including how EPA has proposed to

define Healthy Ocean Waters and Special Ocean Sites (Preamble Section VIII 125.121).

- The proposed definition of significantly expanded discharge (Preamble Section VIII 125.121).
- The removal of the use of "no irreparable harm" and "no reasonable alternatives" to the ocean environment for issuance of permits when there is not sufficient information to determine if the discharge would cause unreasonable degradation (Preamble Section VIII 125.121).
- How EPA proposes to implement CWA section 403(c)(2), and the effects of this proposal on permitted entities (Preamble Section VIII 125.123).
- The removal of the definition of "unreasonable degradation" (Preamble Section VIII 125.121, 125.124).
- The approach regarding mixing zones outlined in the preamble (Preamble Section VIII 125.121 and 125.123 and Rule § 125.123(b)(4)).
- The list of proposed SOSs–are there other sites that should be added to this list in future proposals or are there sites currently listed that should be removed? Please submit data and rationale for your recommendation (Preamble Section VIII 125.125 and Rule § 125.125).
- The criteria and framework proposed for identification, establishment, and disestablishment of SOSs (Preamble Section VIII 125.125).
- The specific marine water quality criteria that are explicitly identified for use in ocean waters (Preamble Section VIII 125.123 and Rule § 125.123).
- How to appropriately tailor the requirements for Healthy Ocean Waters, including applicable numeric criteria, to specific circumstances (Preamble Section VIII 125.123).

- The preferred terminology for a balanced, indigenous population (Preamble Section VIII 124.123 and Rule § 125.123 (b)(1)).
- The proposed CWA section 403 permitting requirements, including the need for and burden associated with monitoring, record keeping, reporting, and study requirements (Preamble Section VIII 125.124, Rule § 125.124).
- Does the inclusion of critical habitat for threatened or endangered species in the definition of SOSs adequately protect these species? If not, how should they be considered under the proposed rule? (Preamble Section VIII 125.121 and Rule § 125.121(f)).
- Whether additional levels of protection for specific ocean waters would be desirable, such as a level with less stringent requirements than proposed for SOSs (Preamble Section VIII 125.125).
- Requiring the designation of all ocean waters (including State waters without an EPA-approved designated use) as Healthy Ocean Waters (Preamble Section VIII 125.121 and Rule § 125.121(e)).
- Requiring that all ocean discharges meet applicable water quality criteria (Preamble Section VIII 125.123 and Rule §§ 125.123(a) and (b)(2)).
- The proposed requirement that Healthy Ocean Waters do not apply to State waters (within three miles) if the State has applicable CWA water quality standards in place (Preamble Section VIII 125.121 and 125.123 and Rule §§ 125.121, 125.122 and 125.123).
- The need for an antidegradation policy for ocean waters (Preamble Section VIII 125.123)
- Allowing waivers to be issued by the President to allow permits for new or significantly expanded discharges into SOSs (Preamble Section VIII 125.124 and Rule § 125.124

(d)(2)).

- The availability of information (data) that specifically characterizes the biological, chemical or physical impacts of the ocean discharge to the marine environment (Preamble Section VIII 125.123 and 125.124 and Rule § 125.124).
- The proposed implementation of CWA section 403(c)(1)(F) regarding available alternatives (Preamble Section VIII 125.124(a)(9)).
- How unreasonable economic burden is determined (Preamble Section VIII 125.124(c)(3)).
- The proposed requirement that the Governor of a State or Territory or Tribal leader must concur in writing if an SOS is to be established in the waters of that State, Territory, or Tribe (Preamble Section VIII 125.125 and Rule § 125.125(b)(3)).
- EPA's conclusion that future activities can avoid the use of Special Ocean Sites and need not be excluded from the restrictions in Special Ocean Sites (Preamble Section IX (A)).
- Any quantitative information on the costs of the proposed regulation, beyond the administrative costs estimated here (Preamble Section X).
- The proposed CWA section 403 requirements and the methods used to determine the benefit and cost impact values supporting this proposed regulation (Preamble Section X).
- The potential impact of the proposed rule on small entities and on issues related to such impacts (Preamble Section XII(B)).
- The Agency's need for the requirements identified in this proposal, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden including through the use of automated collection techniques (Preamble Section XII(E)).
- Identification of potentially-applicable voluntary consensus standards and an explanation

as to why such standards should be used in this regulation (Preamble Section XII(I)).

EPA encourages comments on these specific issues and any other sections of the preamble or the proposed regulation.

F. General Solicitation of Comment

EPA encourages public participation in this rulemaking. EPA asks that comments address any perceived deficiencies in the record supporting this proposal and that suggested revisions or corrections be supported by data. EPA invites all parties to coordinate their data submissions supporting this proposal or its deficiencies with the Agency to facilitate mutually beneficial and cost-effective data submissions. Please refer to the FOR FURTHER INFORMATION section at the beginning of this preamble for a contact at EPA.

To ensure that EPA can properly respond to comments, the Agency prefers that commenters cite, where possible, the paragraph(s) or sections in the document or supporting documents to which each comment refers. Please submit an original and two copies of your comments and enclosures (including references).

XII. Administrative Requirements

A. Executive Order 13158: Marine Protected Areas

Executive Order 13158 (65 FR 34909, May 31, 2000) requires EPA to “expeditiously propose new science-based regulations, as necessary, to ensure appropriate levels of protection for the marine environment." EPA may take action to enhance or expand protection of existing

marine protected areas and to establish or recommend, as appropriate, new marine protected areas. The purpose of the executive order is to protect the significant natural and cultural resources within the marine environment, over which the United States exercises jurisdiction.

This proposed rule recognizes that there are sensitive biological areas within ocean waters that are more susceptible to adverse environmental impacts from ocean discharges. The designation of SOSs is largely based on protecting these sensitive biological areas. In addition, the extension of the use of marine water quality criteria offshore, and the application of these criteria within State waters for waters without applicable CWA water quality standards further protects ocean waters. EPA expects this proposal to advance the objectives of the Executive Order to protect marine areas. EPA also notes that there are many other efforts underway by EPA and its partners to protect the marine environment, as defined in the Executive Order. This proposal is one important step in achieving the goals of the Executive Order.

B. Regulatory Flexibility Act (RFA), as Amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 et seq.

The Regulatory Flexibility Act generally requires Federal agencies to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the Agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions. For purposes of assessing the impacts of today's rule on small entities, small entity is defined as: (1) a small business according to RFA default definitions for small businesses (based on SBA size standards); (2) a small governmental jurisdiction that is a government of a city, county, town,

school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

Under section 605(b) of the RFA, however, if the head of an agency certifies that a rule will not have a significant economic impact on a substantial number of small entities, the statute does not require the agency to prepare a regulatory flexibility analysis. Pursuant to section 605(b), the Administrator certifies that this proposal, if adopted, will not have a significant economic impact on a substantial number of small entities for the reasons explained below. Consequently, EPA has not prepared a regulatory flexibility analysis.

This proposed rule has two components. The first of these components would amend the requirements applicable to NPDES permits for discharges to all ocean waters, including amendments to the information requirements for these permits, and would establish Special Ocean Sites, where permits for new or significantly expanded discharges would be prohibited. The second component would establish ambient water quality criteria applicable to ocean waters beyond state waters (and within State waters only if States do not have applicable water quality standards in place). Discussion of these two components of the proposed rule follows this discussion of the permitted entities. Of the 254 current individual permits for ocean discharges, 161 are held by large entities, 87 are held by small entities, and 6 are unclassifiable due to lack of data about the facilities, but can be assumed to be small. There are also 11 general permits, covering discharges from oil and gas operations, seafood processing, and storm water. EPA estimates that there are 2,761 entities covered under the oil and gas general permits. It has been determined that 35 are small entities. EPA is uncertain about the status of 72 of the entities. If EPA conservatively assumes that these 72 entities are small entities, there would be at least 107

small entities covered under the oil and gas general permits. EPA estimates that there are approximately 211 entities covered under the seafood processing general permits, and at least 100 of these are small entities. Dischargers under the storm water general permits are unclassifiable due to lack of data about the facilities.

With respect to the first component of today's rule, EPA examined the economic impacts of the proposed revised requirements for ocean discharge permits contained in 40 CFR 125.124. These requirements would be implemented by States, Territories, and Tribes authorized to administer NPDES programs in State, Territorial, or Tribal waters, and by EPA in Federal waters and the waters of States, Territories, and Tribes not authorized to administer the NPDES program. Other than the prohibition of new or significantly expanded discharges to SOSs (discussed below) and the information collection burden for the alternatives analysis contained in proposed 40 CFR 125.124 (c)(3), these criteria are substantively the same as those in the existing regulation at 40 CFR 125.122, 125.123, and 125.124, and therefore would not result in increased costs to small entities. The information collection burden for the alternatives analysis will only affect applicants for an individual permit because dischargers under a general permit would not be required to submit this information. EPA estimates that the alternatives analysis would result in a cost of $230,268 to the 93 affected small entities ($2,476 per entity). This value represents administrative costs to the permit applicants in furnishing information for the alternatives analysis. There may also be additional compliance costs if the alternatives analysis in fact identifies more costly alternatives which are subsequently reflected in the permit. Therefore, given the relatively small economic costs that EPA is able to quantify, particularly in light of the potentially large universe of small entities affected, EPA does not believe that the information requirements of the alternatives analysis and resulting impact on permit conditions would

constitute “a significant economic impact on a substantial number of small entities.” With respect to the SOS designations, EPA analyzed the likely impacts of the proposed requirements on small entities projected to discharge or significantly expand their discharges into the areas proposed to be established as Special Ocean Sites. EPA has not been able to identify any small entities that over the next 5 years would be affected by this aspect of the proposal.

With respect to the second component of today’s rule, which would establish ambient water quality criteria for ocean waters beyond State waters (and within State waters only if States do not have applicable water quality standards in place), these ambient criteria do not directly impose any requirements on any discharger, including small entities. These ambient water quality criteria apply to the ocean; they would be implemented through the National Pollutant Discharge Elimination System (NPDES) program that limits discharges to waters of the United States except in compliance with an EPA permit. Section 403 of the CWA requires that all NPDES permits must include any limits on discharges that are necessary to meet CWA section 403 ocean discharge criteria. Under the proposed rule, in waters where applicable State, Territorial, Federal or authorized Tribal water quality criteria are in place (which currently is the case for all State ocean waters), the State, Territorial, Federal or Tribal criteria continue to apply rather than the criteria included in this proposed rule. In Federal waters, EPA would apply the criteria in this Federal rule. As a result of EPA's proposal, EPA would need to ensure that permits it issues include limits as necessary to meet the water quality standards contained in today's proposed rule. In doing so, EPA would have considerable discretion in deciding how to meet the water quality standards and in developing discharge limits as needed to meet the standards. In circumstances where there is more than one discharger to a water body that is subject to water quality standards or criteria, EPA would have discretion in deciding on the

appropriate limits for the different dischargers. Further, EPA could employ a mixing zone for a particular discharge or a compliance schedule as authorized under current regulations at 40 CFR 122.47.

EPA recognizes, however, that at the time permit decisions are made, there could be significant impacts on individual small entities as a result of the rule. While EPA's implementation of Federally-promulgated water quality standards may result indirectly in new or revised discharge limits for small entities, the standards themselves do not apply to any discharger, including small entities. The new permitting requirements and restrictions could impose costs directly on small entities, but EPA does not believe that collectively, these costs would constitute a significant impact on a substantial number of small entities.

The RFA requires analysis of the economic impact of a rule only on the small entities subject to the rule's requirements. Courts have consistently held that the RFA imposes no obligation on an Agency to prepare a small entity analysis of the effect of a rule on entities not regulated by the rule. *Motor & Equip. Mrfrs. Ass'n v. Nichols,* 142 F.3d 449, 467 & n.18 (D.C. Cir. 1998)(quoting *United States Distribution Companies v. FERC,* 88 F.3d 1105, 1170 (D.C. Cir. 1996); see also *American Trucking Association, Inc. v. EPA,* 175 F.3d 1027 (D.C. Cir. 1999). The water quality standards in the proposed rule would have a direct effect only on EPA (or a State, Territory, or authorized Tribe if in the future it removes its current standards) which is not a small entity under the RFA. Thus, individual dischargers, including small entities, are not directly subject to the water quality standards in the proposed rule. Moreover, because of EPA's discretion in implementing these standards, EPA cannot assess the extent to which the promulgation of this rule may subsequently affect any dischargers, including small entities. Consequently, this aspect of the proposed rule does not have a significant impact on a substantial

number of small entities. Based on discussions above, certification of the proposed under section 605(b) is appropriate. *State of Michigan, et al. v. U.S. Environmental Protection Agency*, No. 98-1497 (D.C. Cir. Mar. 3, 2000), slip op. at 41-42.

C. Regulatory Planning and Review, Executive Order 12866

Under Executive Order 12866 (58 FR 51735, October 4, 1993), EPA must determine whether the regulatory action is "significant" and therefore subject to Office of Management and Budget (OMB) review and the requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or Tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of Executive Order 12866, it has been determined that this rule is a "significant regulatory action." As such, this action was submitted to OMB for review. Changes made in response to OMB suggestions or recommendations will be documented in the public

record.

An analysis of the costs and impacts of the proposed rule, and the methodologies used to assess them, are included in the document, "Economic Analysis for the 403 Rule Revisions," which is available in the docket for the rulemaking.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104-4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, Territorial, local, and Tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, Territorial, local, and Tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted.

Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including Tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying

potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements. EPA has determined that this proposed rule would contain no regulatory requirements that might significantly or uniquely affect small governments, including tribal governments. To the extent that small governments may be indirectly affected by a State's, Territory's, authorized Tribe's, or EPA's application of these regulations to their discharges to ocean waters, under existing law they must meet applicable water quality standards and meet the existing requirement of no unreasonable degradation to the marine environment. This rule does not change those substantive requirements. To the extent that there may be some administrative costs relating to the proposed alternatives analysis, such indirect effects are not significant or unique to small governments. They are not unique because they might be felt by any entity seeking authorization to discharge pollutants to the ocean.

EPA has determined that this rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, Territorial, local, and Tribal governments in the aggregate, or the private sector in any one year. This rule is expected to impose an additional impact of $1,458,646 per year on State, Territorial, local, and Tribal governments and the private sector. This estimated cost covers 54 permits, 10 petitions for the establishment of SOSs, and the evaluation of 60 NOIs for discharges into SOSs under a general permit.

Comparison of existing CWA section 403 permits shows that NPDES discharges in Federal waters are currently meeting Federal water quality criteria and/or approved State, Territorial, or authorized Tribal water quality standards. Therefore, no changes in facility operations are anticipated to be required for facilities discharging to Healthy Ocean Waters or

Special Ocean Sites under existing section 403 permits. EPA recognizes that a few existing permits were issued under the existing no irreparable harm provision, which would be eliminated by the proposed rule, but believes that these facilities would be able to comply with the proposed requirements without significant operational changes.

EPA expects to receive five new permit applications over the next five years (one application per year). EPA expects that these applicants will experience no additional operational burden because the proposed facilities and their discharges do not fall within any of the areas being proposed for establishment as an SOS. However, EPA cannot be sure that no potential permit applicants will be affected by these requirements, even in the short term, and anticipates that at some point in the future, the establishment of SOSs will prohibit activities that would otherwise have occurred.

Therefore, today's proposed rule is not subject to the requirements of sections 202 and 205 of the UMRA.

E. Paperwork Reduction Act

The information collection requirements in this proposed rule have been submitted for approval to the OMB under the Paperwork Reduction Act, 44 U.S.C. 3501 et seq. An Information Collection Request (ICR) document has been prepared by EPA (ICR No.1990.01) and a copy may be obtained from Sandy Farmer by mail at Collection Strategies Division; U.S. Environmental Protection Agency (2822); 1200 Pennsylvania Ave., NW., Washington, DC 20460, by email at farmer.sandy@epa.gov, or by calling (202) 260-2740. A copy may also be downloaded off the internet at http://www.epa.gov/icr.

Municipal, industrial dischargers, and other point source dischargers to waters of the

United States are required by section 402 of the CWA to obtain an NPDES permit. These NPDES permits require the discharger to comply with technology- and water quality-based criteria. In addition, because of the complexity and ecological significance of marine ecosystems, discharges to the ocean waters (i.e., waters beyond the baseline) must also comply with section 403 of the CWA, which specifically addresses impacts from such point sources on ocean resources. The current ocean discharge regulations have information collection requirements that will be revised by the proposed regulation. The information requirements identified in this proposed regulation are to support the issuance of NPDES ocean discharge permits that are protective of the ocean environment. Also, such information may be used to determine if a Special Ocean Site should be established where no permits for new or significantly expanded discharges shall be issued except under a waiver from the President. Permit applications may contain confidential business information. If this is the case, the respondent may request that such information be treated as confidential. All confidential data will be handled in accordance with 40 CFR 122.7, 40 CFR Part 2, and EPA's Security Manual Part III, Chapter 9, dated August 9, 1976. However, CWA section 308(b) specifically states that effluent data may not be treated as confidential.

There are three new information collection activities in this proposed regulation. They include: 1) revised permit application preparation and review; 2) SOS establishment or disestablishment petition submittals from States, Territories, Tribes, local governments, or persons; and 3) SOS establishment and/or disestablishment by EPA.

It is estimated that there will be 54 applications for ocean discharge permits per year. The burden and costs on industry for preparing and submitting permits incorporating the new requirements proposed by the regulation revision is 21,006 hours and $1,299,378, respectively.

The industry operations and maintenance cost is $8,100. There is no industry capital or start up cost associated with this activity. The new requirements associated with the permit evaluation also pose additional burdens and costs to EPA, States, Tribes, and Territories. Of the 54 estimated applications for ocean discharge permits, it is estimated that States will evaluate 41 and EPA will evaluate 13. The additional burden to States will be 912 hours and the associated costs will be $36,348. The State operations and maintenance cost is $6,150. There is no State capital or start up cost. The additional burden to EPA will be 286 hours, and the associated costs will be $12,044; there is no EPA operations and maintenance cost, and no capital or start up cost associated with these evaluations.

EPA projects that there will be 60 NOI submittals that will be evaluated by the Agency for discharges into SOSs. The burden for these activities is 30 hours, and the total cost will be $518. There is no operations and maintenance cost, and no capital or start up cost associated with this activity.

States or local governments, other organizations or persons can submit petitions to EPA for the establishment or disestablishment of SOSs. It is projected that 10 such petitions will be submitted to the Agency annually. The burden associated with the petitions is 2,980 hours and the cost is $108,627. The total annual operations and maintenance cost is $100, and there is no annual capital or start up cost. EPA reviews the petitions and makes a determination. The burden associated with that determination is 3,410 hours, and the cost is $123,190. There is no operations and maintenance cost, and no capital or start up cost associated with this activity.

In the new proposed regulations, EPA also establishes or disestablishes SOSs without being petitioned. It is projected that one SOS will be established or disestablished annually. The burden for that activity is 341 hours, and the associated cost will be $12,318. There is no

operations and maintenance cost, and no capital or start up cost associated with this activity.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An Agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR Part 9 and 48 CFR Chapter 15.

Comments are requested on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques. Send comments on the ICR to the Director, Collection Strategies Division; U.S. Environmental Protection Agency (2822); 1200 Pennsylvania Ave., NW, Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th St., NW., Washington, DC 20503, marked "Attention: Desk Officer for EPA." Include the ICR number in any correspondence. Since OMB is required to make a decision concerning the ICR between 30 and 60 days after [Insert date of publication in the FEDERAL REGISTER], a comment to OMB is best assured of having its full effect if OMB receives it by [Insert date 30 days after publication in the FEDERAL REGISTER]. The final rule will respond to any OMB or public comments on

the information collection requirements contained in this proposal.

F. Federalism, Executive Order 13132

Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999) requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government."

This proposed rule does not have federalism implications within the meaning of the Executive Order. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. This proposed rule does not fundamentally change the relationship between these entities, because States still retain the right to regulate ocean discharges into their waters, utilizing their State water quality standards, and no SOS would be established in State ocean waters without the written consent of the State.

Although this rule does not have federalism implications, EPA contacted the States and Tribes informing them of the proposed rule, inviting them to participate in public meetings, and soliciting comments on this action.

In the spirit of Executive Order 13132, and consistent with EPA policy to promote communications between EPA and State and local governments, EPA specifically solicits

comment on this proposed rule from State and local officials.

G. Consultation With Tribal Governments

On November 6, 2000, the President issued Executive Order 13175 (65 FR 67249) entitled, "Consultation and Coordination with Indian Tribal Governments." Executive Order 13175 took effect on January 6, 2001, and revokes Executive Order 13084 (Tribal Consultation) as of that date. EPA developed this proposed rule, however, during the period when E.O. 13084 was in effect; thus, EPA addressed tribal considerations under E.O. 13084. EPA will analyze and fully comply with the requirements of E.O. 13175 before promulgating the final rule.

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian Tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the Tribal governments, or EPA consults with these governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to OMB, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected Tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian Tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

Today's proposed rule does not significantly or uniquely affect the communities of Indian Tribal governments nor does it impose substantial direct compliance costs on them. To the

extent that Tribal governments may be indirectly affected by a State's, Tribe's or EPA's application of these regulations to their discharges to ocean waters, under existing law they must meet applicable water quality standards and meet the existing requirement of no unreasonable degradation to the marine environment. This rule does not change those substantive requirements. To the extent that there may be some administrative costs relating to the proposed alternatives analysis, such indirect effects are not significant or unique to Tribal governments. They are not unique because they might be felt by any entity seeking authorization to discharge pollutants to the ocean. Additionally, given the available data, EPA estimates that no facilities owned by Tribes will be subject to the rule. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule. Nevertheless, EPA did contact all potentially affected Tribes informing them of the proposed rule, inviting them to participate in the public meetings, and soliciting comments on this action.

H. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks

Executive Order 13045 (62 FR 19885, April 23, 1997) applies to any rule that: (1) is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the EPA must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by EPA.

This proposed rule is not subject to Executive Order 13045 because it is not an

economically significant rule as defined under Executive Order 12866, and it does not concern an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. In addition, EPA believes that increasing protection of ocean waters will decrease the pollutants entering recreationally- and commercially-caught seafood. This will enhance protection of children by reducing their potential intake of pollutants.

The public is invited to submit or identify peer-reviewed studies and data, of which the agency may not be aware, that assessed results of early life exposure to contaminants in the ocean.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 ("NTTAA"), Public Law 104-113, Sec. 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards. This proposed rule does not involve technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards. Furthermore, the use of voluntary consensus standards is already authorized under section 402 of the CWA.

EPA welcomes comments on this aspect of the proposed rulemaking and, specifically, invites the public to identify potentially-applicable voluntary consensus standards and to explain

why such standards should be used in this regulation.

J. Plain Language Directive

Executive Order 12866 and the President's memorandum of June 1, 1998, require each agency to write all rules in plain language. We invite your comments on how to make this proposed rule easier to understand. For example: Have we organized the material to suit your needs? Are the requirements in the rule clearly stated? Does the rule contain technical language or jargon that isn't clear? Would a different format (grouping and order of sections, use of headings or paragraphs) make the rule easier to understand? Would more (but shorter) sections be better? Could we improve clarity by adding tables, lists, or diagrams? What else could we do to make the rule easier to understand?

K. Endangered Species Act

Pursuant to section 7(a) of the Endangered Species Act, EPA is consulting with the U.S. National Marine Fisheries Service and the U.S. Fish and Wildlife Service concerning this rulemaking. EPA has initiated informal consultation on this rule. As a result of this consultation, EPA may modify some provisions of this proposed rule.

EPA does not believe that today's action is likely to jeopardize the continued existence of an endangered or threatened species listed under section 4 of the Endangered Species Act or result in the destruction or adverse modification of its designated critical habitat. The purpose of today's proposed rulemaking is to protect water quality in the ocean, which will further protect any listed species. In addition, the establishment of Special Ocean Sites where no new discharges will be permitted, will reduce the area of the ocean that is potentially exposed to

pollutants. The definition of "Special Ocean Sites" in today's rule includes ESA-designated critical habitat for threatened or endangered species.

In summary, EPA believes that activities carried out under the regulations implementing section 403 of the CWA could not jeopardize listed species, but rather will result in improvements in marine water quality, and protection of special habitats, thereby improving protection of endangered species.

L. Essential Fish Habitat

Under section 305(b)(2) of the Magnuson-Stevens Fishery Conservation and Management Act of 1996, Federal agencies must consult with the NMFS and appropriate fisheries councils before undertaking actions that may adversely affect designated essential fish habitat. The Magnuson-Stevens Act defines essential fish habitat as those waters and substrate necessary to fish for spawning, breeding, feeding or growth to maturity and requires consultation with the Secretary of the Department of Commerce with respect to any action that may adversely affect any essential fish habitat identified under the Act.

EPA does not believe that today's action is likely to adversely affect any essential fish habitat, since these regulations will result in improvements in water quality, to the benefit of marine fish habitat and all marine fish species. Although EFH consultation is not necessary for this action, EPA did meet with the National Marine Fisheries Service and it was agreed that this action is not likely to have an adverse effect on any essential fish habitat. However, EPA's issuance of NPDES permits for discharges into marine waters will be subject to consultation if EPA determines that those permits may adversely affect Essential Fish Habitat. NMFS also has a statutory obligation to recommend conservation measures for State actions that would adversely

affect EFH.

List of Subjects

40 CFR Part 122

Environmental protection, Administrative practice and procedure, Confidential business information, Hazardous substances, Reporting and recordkeeping requirements, Water pollution control.

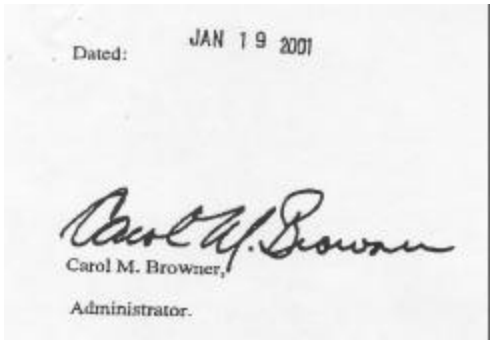
40 CFR Part 123

Environmental protection, Administrative practice and procedure, Confidential business information, Hazardous substances, Indian lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Water pollution control.

40 CFR Part 125

Environmental protection, Reporting and recordkeeping requirements, Waste treatment and disposal, Water pollution control.

Dated: January 19, 2001



Carol M. Browner,

Administrator.

For the reasons stated in the preamble, the Environmental Protection Agency proposes to amend 40 CFR Parts 122, 123, and 125 as set forth below:

PART 122--EPA ADMINISTERED PERMIT PROGRAMS: THE NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM

1. The authority citation for part 122 continues to read as follows:

Authority: The Clean Water Act, 33 U.S.C. 1251 et seq.

2. Section 122.44 of this part is amended by revising paragraph (d)(7) to read as follows:

§ 122.44 Establishing limitations, standards, and other permit conditions (applicable to

State NPDES programs, see § 123.25).

* * * * *

(d)* * *

(7) Incorporate section 403(c) criteria under part 125, subpart M for discharges to ocean waters (as defined at 40 CFR 125.121).

PART 123--STATE PROGRAM REQUIREMENTS

1. The authority citation for part 123 of this chapter continues to read as follows:

Authority: Clean Water Act, 33 U.S.C. 1251 et seq.

2. Section 123.25 of this part is amended by revising paragraph (a)(36) to read as follows:

§ 123.25 Requirements for permitting.

(a) * * *

(36) Subparts A, B, D, H, and M of part 125 of this chapter;

* * * * *

PART 125--CRITERIA AND STANDARDS FOR THE NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM

1. The authority citation for part 125 of this chapter continues to read as follows:

Authority: Clean Water Act, 33 U.S.C. 1251 et seq.

2. Subpart M of this part is revised to read as follows:

Subpart M -- Ocean Discharge Criteria

Sec.

§ 125.120 Scope and purpose.

This **subpart** establishes:

(a) Minimum environmental standards to protect ocean waters to implement section 403 of the Federal Water Pollution Control Act (Clean Water Act), 33 U.S.C. 1343, and meet the goals of the Clean Water Act, 33 U.S.C. 1251(a);

(b) Requirements for issuance of National Pollutant Discharge Elimination System (NPDES) permits for the discharge of pollutants to ocean waters in addition to requirements under parts 122 and 124 of this chapter;

(c) A process for identifying, establishing, disestablishing, and managing Special Ocean Sites within ocean waters.

§ 125.121 Definitions.

For the purposes of this subpart:

(a) Baseline means the line of ordinary low water along that portion of the coast which is in direct contact with the open sea, and the line marking the seaward limit of inland waters.

(b) Ocean waters means the waters seaward of the baseline that are within the jurisdiction of the Clean Water Act.

(c) State ocean waters means ocean waters from the baseline to three miles seaward from the baseline.

(d) Federal ocean waters means ocean waters beyond three miles from the baseline.

(e) Healthy ocean waters is the designated use for Federal ocean waters, and for any State ocean waters where applicable CWA water quality standards are not in place; these waters must meet the requirements of § 125.123(b).

(f) Special Ocean Sites are areas within ocean waters that have been established pursuant to § 125.125, because of outstanding ecological, environmental, recreational, scientific, or esthetic value. Special Ocean Sites may include high value coral reef ecosystems, hydrothermal vent ecosystems, critical habitat for threatened or endangered species designated under the Endangered Species Act (ESA), unique or irreplaceable spawning/breeding/nursery areas, seasonal migratory pathways, oceanic upwelling areas, and other areas critical to the life histories of marine organisms. Special Ocean Sites should also include a band of water at least 1,000 meters wide extending completely around the high value area in order to protect the high value area from pollutants or pollutant parameters that originate outside the Special Ocean Site.

(g) Significantly expanded discharge means a discharge with a twenty percent or greater increase in pollutant loadings above the current permit limit.

(h) Administrator means the Administrator of the United States Environmental Protection Agency, or an authorized representative.

(i) Director means the permit authority which may be either the Regional Administrator or the State Director, as the context requires, or an authorized representative. When there is no "approved State program," and there is an EPA administered program, "Director" means the Regional Administrator. When there is an approved State program, "Director" normally means the State Director. In some circumstances, however, EPA retains the authority to take certain actions even when there is an approved State program. (For example, when EPA has issued an NPDES permit prior to the approval of a State program, EPA may retain jurisdiction over that permit after program approval, see 40 CFR 123.1.) In such cases, the term "Director" means the Regional Administrator and not the State Director.

§ 125.122 What ocean discharge requirements apply to you?

The ocean discharge requirements that apply to you are set out in the following table:

If you are requesting an NPDES permit to discharge to:	Your NPDES permit must derive from and meet:
(a) State ocean waters (baseline to 3 miles) where applicable CWA water quality standards[(1)] are in place	All requirements necessary to support applicable water quality standards as specified in § 125.123(a) and the provisions in § 125.124
(b) State ocean waters (baseline to 3 miles) where applicable CWA water quality standards[(1)] are NOT in place	All requirements necessary to support Healthy Ocean Waters as specified in § 125.123(b) and the provisions in § 125.124
(c) Federal ocean waters (beyond 3 miles from the baseline)	All requirements necessary to support Healthy Ocean Waters as specified in § 125.123(b) and the provisions in § 125.124
(d) Waters established as a Special Ocean Site	All applicable requirements of § 125.125(d)

[1] As determined by the provisions in 40 CFR 131.21(c)

§ 125.123 What standards are established for ocean waters under section 403(c) of the CWA?

(a) For State ocean waters where applicable State, Territorial, authorized Tribal, or Federal CWA water quality standards are in place, those water quality standards apply.

(b) Healthy Ocean Waters.

(1) All Healthy Ocean Waters shall provide for the attainment and maintenance of esthetic and scientific values, provide for recreation in and on the water, support a balanced indigenous population of aquatic life and wildlife (including benthic organisms, fish and shellfish, and other marine organisms), taking into consideration both direct and indirect effects of pollutants, and protect human health.

(2) At a minimum, the following water quality criteria are established for Healthy Ocean Waters:

Toxic Pollutant	**CAS Number[(1)]**	**CMC[(2)] (µg/L)**	**CCC[(3)] (µg/L)**
1. Arsenic[(4)]	7440382	69	36
2. Cadmium[(4)]	7440439	42	9.3
3. Chromium VI[(4)]	18540299	1,100	50
4. Copper[(4)]	7440508	4.8	3.1
5. Lead[(4)]	7439921	210	8.1
6. Mercury[(4)]	7439976	1.8	0.94
7. Nickel[(4)]	7440020	74	8.2
8. Selenium[(4)]	7782492	290	71
9. Silver[(4)]	7440224	1.9	
10. Zinc[(4)]	7440666	90	81
11. Chlorine	7782505	13	7.5
12. Cyanide[(5)]	57125	1	1
13. Pentachlorophenol	87865	13	7.9
14. alpha-Endosulfan	959988	0.034	0.0087

15. beta-Endosulfan	33213659	0.034	0.0087
16. Chloropyrifos	2921882	0.011	0.0056

[1] CAS number is the Chemical Abstract Service unique chemical identifier number.

[2] CMC, the criteria maximum concentration, equals the highest concentration of a pollutant to which aquatic life can be exposed for a short period of time without deleterious effects.

[3] CCC, the criteria continuous concentration, equals the highest concentration of a pollutant to which aquatic life can be exposed for an extended period of time (4 days) without deleterious effects.

[4] Criteria for metals are expressed in terms of the dissolved fraction of the metal in the water column. Criterion values were calculated by using EPA's Clean Water Act 304(a) guidance values (described in the total recoverable fraction) and then applying the following conversion factors to both the CMC and CCC: 1.000 for Arsenic, 0.994 for Cadmium, 0.003 for Chromium VI, 0.83 for Copper, 0.951 for Lead, 0.85 for Mercury, 0.990 for Nickel, 0.998 for Selenium, 0.85 for Silver, and 0.946 for Zinc.

[5] Criterion expressed as free cyanide.

(3) Each NPDES permit for a discharge to Healthy Ocean Waters must contain effluent limitations that control each pollutant or pollutant parameter which the Director determines is or may be discharged at a level which will cause, have the reasonable potential to cause, or contributes to an excursion above any of the numeric criteria listed in paragraph (b)(2) of this section or an inability to meet the narrative criterion in paragraph (b)(1) of this section. When determining whether a discharge causes, has the reasonable potential to cause, or contributes to an

excursion above the numeric criteria in paragraph (b)(2) of this section, the Director shall use procedures which account for existing controls on point and nonpoint sources of pollution, the variability of the pollutant or pollutant parameter in the effluent, and the dilution of the effluent in the receiving water.

(4) For purposes of paragraphs (b)(1), (b)(2), and (b)(3) of this section, the Director may designate mixing zones in Healthy Ocean Waters provided that the zone does not extend to a distance of more than 100 meters from the discharge point, unless the Director determines that a more restrictive mixing zone or another definition of mixing zone is more appropriate for a specific discharge. Where the Director establishes a mixing zone, the in-zone water quality in such mixing zone must ensure that the requirements in paragraph (b)(1) of this section and § 125.124(b)(3) are met for the surrounding ocean environment.

(5) The quality of waters that exceed levels necessary to support Healthy Ocean Waters shall be maintained and protected unless the Director finds, after consulting with the public, that allowing lower water quality is necessary to accommodate important economic or social development. In allowing such lower water quality, the Director shall assure that water quality is adequate to fully support Healthy Ocean Waters.

§ 125.124 What are the ocean discharge permit requirements?

(a) What information must the applicant submit? In addition to all information required by the permit application, the applicant for an NPDES permit to discharge to ocean waters shall provide the following information to the Director:

(1) An evaluation of the expected attainment and maintenance of applicable State water quality standards, or attainment and maintenance of Healthy Ocean Waters;

(2) An evaluation of the chemical, physical, and biological constituents of any proposed discharge, including the quantities, qualities, composition, and potential for bioaccumulation or persistence of pollutants, and the potential impact to indigenous biota;

(3) A description of the composition, diversity, and productivity of the biological community in and on the water and sediment in the area of the proposed discharge, and in any areas likely to be affected by the proposed discharge, and an evaluation of the impacts of the proposed discharge on the biological community. The description of the biological community must include identification of unique species or communities of species, species identified as threatened or endangered pursuant to the ESA, and species critical to the structure or function of the ecosystem, such as those important to the food chain, present in these areas;

(4) An evaluation of the potential short-term and long-term transport or migration of

pollutants in the proposed discharge by biological, chemical, or physical processes;

(5) An evaluation of potential impacts of the proposed discharge on esthetic, recreational, and economic values or resources, including existing and potential beach recreation and recreational, subsistence and commercial finfishing and shellfishing;

(6) A description of any fish, shellfish, wildlife, or other aquatic organisms in the area of the proposed discharge that are caught or harvested commercially, recreationally, or for subsistence for human consumption, and an evaluation of potential impacts on the health of persons consuming these fish, shellfish, wildlife, or other aquatic organisms;

(7) Identification of any enforceable policies of a State's Federally-approved Coastal Zone Management Program, and a description of how the proposed discharge will comply with such enforceable policies, pursuant to 15 CFR Part 930, Subpart D;

(8) An assessment of practicable alternative treatment or production processes, or modifications to treatment or production processes, that would eliminate or reduce the quantities of pollutants in the proposed discharge;

(9) An evaluation of practicable alternatives to the proposed discharge, including an

evaluation of the possibility of land-based disposal, injection, or discharge to waters of the United States other than ocean waters or to other ocean waters;

(10) A proposed monitoring program, to be conducted by the applicant prior to permit issuance and during the term of a permit, which must be sufficient to assess compliance with permit requirements; and

(11) Any other pertinent information that the Director may require.

(b) Under what conditions may the Director issue an NPDES permit for a discharge to ocean waters? The Director may issue an NPDES permit for a discharge to ocean waters provided that each of the following conditions is met:

(1) The terms of the permit satisfy the requirements of all applicable provisions of § 125.123; and

(2) Issuance of the permit is not prohibited by paragraph (c) of this section; and

(3) The Director determines that the proposed discharge will not:

(i) Cause significant adverse changes in the composition, diversity, or productivity of the biological community in either water or sediment in the area of the proposed discharge or areas likely to be affected by the proposed discharge; or

(ii) Cause unacceptable risk to human health or wildlife from direct or indirect exposure to pollutant(s) or pollutant parameter(s), including exposure through bioaccumulation of pollutant(s) or consumption of aquatic organisms; or

(iii) Adversely affect recreation in or on the water; or

(iv) Adversely affect esthetic, scientific or economic values to an unreasonable extent.

(c) Under what conditions shall the Director not issue an NPDES permit for a discharge to ocean waters? The Director shall not issue an NPDES permit for a discharge to ocean waters if any of the following conditions or circumstances is present:

(1) The applicant has not provided information that is sufficient to allow the Director to make a permit determination under this subpart; or

(2) The proposed discharge would be a new or significantly expanded discharge to waters of a Special Ocean Site (unless issued in compliance with § 125.124(d)); or

(3) There is an environmentally preferable alternative to the proposed ocean discharge (e.g., land-based disposal, injection, or discharge to waters of the United States other than ocean waters, or to other ocean waters) which would not:

(i) Impose an unreasonable economic burden on the applicant;

(ii) Pose an unacceptable risk to human health or safety as a result of such alternative disposal or discharge.

(d) Variances and Waivers.

(1) Discharges in compliance with variances pursuant to sections 301(g), 301(h), or 316(a) of the Clean Water Act are deemed to be in compliance with the requirements of this subpart for any specific pollutants or conditions specified in the variance.

(2) The President may waive the prohibition established in paragraph (c)(2) of this section based upon a finding that the proposed discharge is required in the interest of national security or essential energy development, or other paramount interest of the United States, and may direct the Director to issue a permit for the proposed discharge to waters of a Special Ocean Site in compliance with the provisions of § 125.125(d).

(e) States, Territories, and Tribes authorized to administer the NPDES program shall transmit to the Administrator a copy of each permit application to discharge into ocean waters within their jurisdiction, and provide notice to the Administrator of each permit proposed to be issued.

(f) What flexibility is there in the scope of the evaluation required under this section? The Director shall apply subparagraphs (a) through (c) of this section in such a way that the extent of the evaluation required, including information required of the permit applicant, is commensurate with the significance and complexity of the discharge activity, including consideration of the severity of the potential environmental impact and the nature, scope, and cost of the project.

§ 125.125 Where are Special Ocean Sites and what is the process for identifying, establishing, disestablishing, and managing Special Ocean Sites?

(a) The following Special Ocean Sites are hereby established:

(1) Flower Garden Banks.

(i) East Flower Garden Bank (Source: 15 CFR Part 922):

Latitude	Longitude
27° 52' 22.92989" N	93° 37' 58.31743" W
27° 53' 21.06070" N	93° 38' 58.34971" W
27° 55' 12.36927" N	93° 39' 17.53673" W
27° 57' 42.76693" N	93° 39' 10.02876" W
27° 58' 56.77402" N	93° 38' 08.65412" W
27° 59' 35.26724" N	93° 35' 35.51546" W
27° 59' 34.07550" N	93° 34' 41.52961" W

27° 55' 25.47841" N	93° 33' 38.48653" W
27° 53' 50.01999" N	93° 33' 43.61102" W
27° 52' 58.89432" N	93° 34' 46.77327" W
27° 52' 20.16275" N	93° 36' 52.14438" W

(ii) West Flower Garden Bank (Source: 15 CFR Part 922):

Latitude	Longitude
27° 48' 38.82343" N	93° 50' 59.16405" W
27° 49' 52.38700" N	93° 52' 39.51671" W
27° 51' 05.75411" N	93° 53' 29.39941" W
27° 51' 38.19044" N	93° 53' 27.69156" W
27° 53' 09.00025" N	93° 52' 57.13954" W
27° 55' 35.03288" N	93° 49' 57.74643" W
27° 55' 31.55468" N	93° 48' 31.69940" W
27° 55' 04.74019" N	93° 46' 50.57291" W
27° 54' 27.75788" N	93° 46' 12.58707" W
27° 53' 27.63622" N	93° 46' 15.62747" W
27° 52' 49.17965" N	93° 46' 39.66997" W
27° 50' 29.25688" N	93° 46' 46.74436" W
27° 48' 39.31559" N	93° 48' 25.92298" W

(iii) Stetson Bank (Source: 15 CFR Part 922):

Latitude	Longitude

28° 09' 00.15652" N	94° 19' 10.39722" W
28° 10' 44.07827" N	94° 19' 05.44836" W
28° 10' 39.15567" N	94° 16' 46.06514" W
28° 08' 55.03448" N	94° 16' 50.47688" W

(2) Gorda Ridge-Blanco Fracture Zone (Source: State of Oregon, Department of Land Conservation and Development):

Latitude	Longitude
41° 34' 27.66065" N	128° 00' 43.51689" W
41° 34' 27.66065" N	125° 59' 16.48311" W
43° 30' 32.33935" N	128° 00' 44.58298" W
43° 30' 32.33935" N	125° 59' 15.41702" W

(3) Escanaba Trough of the Gorda Ridge (Source: U.S. Geological Survey, Menlo Park, CA):

Latitude	Longitude
40° 29' 27.66065" N	127° 45' 42.52906" W
40° 29' 27.66065" N	127° 14' 17.47094" W
41° 35' 32.33935" N	127° 45' 43.23493" W
41° 35' 32.33935" N	127° 14' 16.76507" W

(4) Atlantic Right Whale Critical Habitat Areas (Source: 50 CFR 226.203).

(i) Great South Channel:

Latitude	Longitude
41° 40' 10.5112" N	69° 46' 03.55052" W
40° 59' 11.4678" N	69° 05' 05.06791" W
41° 37' 52.92461" N	68° 12' 12.62348" W
42° 10' 45.30268" N	68° 30' 38.11208" W

(ii) Federal Waters of the Southeastern United States (SEUS) (Habitat III).

(A) SEUS Critical Habitat SOS, Upper Area:

Latitude	Longitude
31° 15' 32.33935" N	81° 13' 18.54929" W
31° 15' 32.33935" N	80° 58' 40.03847" W
30° 14' 27.66065" N	81° 19' 18.92041" W
30° 14' 27.66065" N	81° 04' 49.48485" W

(B) SEUS Critical Habitat SOS, Lower Area:

Latitude	Longitude
30° 15' 32.33935" N	81° 19' 18.92041" W
30° 15' 32.33935" N	81° 16' 22.81708" W
27° 59' 27.66065" N	80° 28' 02.54272" W
27° 59' 27.66065" N	80° 25' 10.25129" W

(b) Identification, Establishment, and Disestablishment of Special Ocean Sites.

(1) Within two years after the effective date of this regulation, and not less often than every five years thereafter, the Administrator shall:

(i) Evaluate whether additional areas should be established as Special Ocean Sites; and

(ii) Evaluate petitions submitted under paragraph (c)(1) of this section for the establishment or disestablishment of Special Ocean Sites; and

(iii) Identify and review information on the environmental conditions of existing Special Ocean Sites and trends related to such conditions; and

(iv) Sign a notice regarding the findings of the evaluations and reviews conducted pursuant to paragraphs (b)(1)(i), (ii), and (iii) of this section, including any proposed decisions to approve or deny a petition regarding a Special Ocean Site; and a notice of proposed rulemaking regarding the establishment or disestablishment of any Special Ocean Site in an approved petition.

(2) EPA shall expeditiously evaluate petitions submitted under paragraph (c)(1) of this section and may act on these petitions sooner than the five year review cycle established in paragraph (b)(1) of this section.

(3) In the case of waters within the jurisdiction of a State, Territory, or Tribe, the Administrator may not establish or disestablish any waters as a Special Ocean Site unless the Governor of the State, Governor of the Territory, or Tribal leader has

provided a written concurrence with the establishment or disestablishment of the Special Ocean Site.

(c) Petition for the Establishment or Disestablishment of Special Ocean Sites.

(1) Any State, Territory, Tribe, local government, or person may submit to the Administrator and the Director of the Office of Wetlands, Oceans, and Watersheds a petition for establishment or disestablishment of a Special Ocean Site.

(2) A petition submitted under this subparagraph shall provide a detailed description of the waters proposed to be established as a Special Ocean Site and include:

(i) A map, preferably a U. S. Geological Survey topographic quadrant map or a National Oceanic and Atmospheric Administration nautical chart, clearly marking the SOS boundaries by latitude and longitude;

(ii) Whether any of the proposed site is within the jurisdiction of a State, Territory, or Tribe;

(iii) Whether the site has received special protection under another authority such as designation as a Marine Protected Area, National Marine Sanctuary, Wildlife

Management Area/Refuge, State, Tribal, or National Park or recreational area, or any other such designation;

(iv) A description of the outstanding biological and physical characteristics of the site;

(v) The concerns regarding the effects of any potential discharges which may be permitted under this subpart on the biological community at the site;

(vii) Any other information that the Administrator may request.

(3) A petition submitted under this subparagraph for the disestablishment of a Special Ocean Site shall include:

(i) The name and location of the site;

(ii) Why the biological and physical characteristics of the site are such that the site no longer requires protection as a Special Ocean Site.

(4) In the case of a proposal to establish or disestablish a Special Ocean Site in waters within the jurisdiction of a State, Territory, or Tribe, a petition must include a letter signed by the Governor of the State, Governor of the Territory, or Tribal

leader concurring in the establishment or disestablishment of the site as a Special Ocean Site.

(5) The Administrator may approve a petition to establish a Special Ocean Site where the petition provides evidence that the site meets the definition in § 125.121(f). The Administrator may approve a petition to disestablish a Special Ocean Site where the petition provides evidence that the site does not meet the definition in § 125.121(f).

(6) The Administrator shall consider and take action on petitions as part of the evaluation conducted pursuant to paragraph (b) of this section. Any petition submitted within the six months prior to the notice in paragraph (b)(1)(iv) of this section being signed may be considered in the subsequent notice, subject to the provisions of paragraph (b)(2) of this section.

(d) Management of Special Ocean Sites.

(1) After the establishment of a Special Ocean Site pursuant to paragraph (b) or (c) of this section, no NPDES permit shall be issued for a new or significantly expanded discharge to waters of a Special Ocean Site except in compliance with a waiver granted under § 125.124(d)(2). Any such permits must meet the applicable requirements of §§ 125.123 and 125.124.

(2) After the establishment of a Special Ocean Site pursuant to paragraph (b) or (c) of this section, an existing permit for a discharge to waters of a Special Ocean Site may be renewed provided that the discharge is not significantly expanded and the permit meets the applicable requirements of §§ 125.123 and 125.124.